

**Pages 1 - 115**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Peter H. Kang, Magistrate Judge

IN RE: SOCIAL MEDIA )  
 ADOLESCENT ADDICTION/PERSONAL )  
 INJURY PRODUCTS LIABILITY )  
 LITIGATION )  
 ) NO. 22-MD-03047 YGR (PHK)  
 )  
 )

San Francisco, California  
Thursday, August 8, 2024

REPORTER'S TRANSCRIPT OF PROCEEDINGS

**APPEARANCES:**

For Plaintiffs:

SEEGER WEISS LLP  
55 Challenger Road, Floor 6  
Ridgefield Park, New Jersey 07660  
BY: **AUDREY C. SIEGEL, ATTORNEY AT LAW**

LIEFF, CABRASER, HEIMANN  
& BERNSTEIN LLP  
275 Battery Street, 29th Floor  
San Francisco, California 94111  
BY: **LEXI J. HAZAM, ATTORNEY AT LAW**  
**PATRICK I. ANDREWS, ATTORNEY AT LAW**

MOTLEY RICE LLC  
401 9th Street NW, Suite 630  
Washington, D.C. 20004  
**BY: PREVIN WARREN, ATTORNEY AT LAW**

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

REPORTED BY: Ana Dub, RMR, RDR, CRR, CCRR, CRG, CCG  
CSR No. 7445, Official United States Reporter

**APPEARANCES:** (CONTINUED)

For Plaintiffs:

MOTLEY RICE LLC  
28 Bridgeside Boulevard  
Mount Pleasant, South Carolina 29464

**BY: JESSICA L. CARROLL, ATTORNEY AT LAW**

MOTLEY RICE LLC  
One Corporate Center  
20 Church Street, 17th Floor  
Hartford, Connecticut 06103

**BY: JESSICA C. COLOMBO, ATTORNEY AT LAW**

GIBBS LAW GROUP LLP  
1111 Broadway, Suite 2100  
Oakland, California 94607

**BY: ANDRE MICHEL MURA, ATTORNEY AT LAW**

Federal/State Liaison Counsel:

BEASLEY ALLEN LAW FIRM  
218 Commerce Street  
Montgomery, Alabama 36104

**BY: JOSEPH G. VAN ZANDT, ATTORNEY AT LAW**

For Plaintiff St. Charles Parish School Board:

RON AUSTIN LAW  
400 MANHATTAN BOULEVARD  
HARVEY, LOUISIANA 70058

**BY: RON A. AUSTIN, ATTORNEY AT LAW**

For Plaintiff State of California:

CALIFORNIA DEPARTMENT OF JUSTICE  
455 Golden Gate Avenue - 11th Floor  
San Francisco, California 94102

**BY: MEGAN M. O'NEILL  
DEPUTY ATTORNEY GENERAL  
EMILY C. KALANITHI  
SUPERVISING DEPUTY ATTORNEY GENERAL**

CALIFORNIA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
1515 Clay Street, Suite 2000  
Oakland, California 94612

**BY: JOSHUA OLSZEWSKI-JUBELIRER  
DEPUTY ATTORNEY GENERAL**

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

**APPEARANCES:** (CONTINUED)

For Plaintiff State of New Jersey:

NEW JERSEY OFFICE OF  
THE ATTORNEY GENERAL  
New Jersey Division of Law  
Data Privacy & Cybersecurity  
124 Halsey Street, Fifth Floor  
Newark, New Jersey 07101

**BY: VERA PRADAXAY, DEPUTY ATTORNEY GENERAL**

For Plaintiff Commonwealth of Kentucky:

KENTUCKY OFFICE OF THE  
ATTORNEY GENERAL  
Office of Consumer Protection  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601

**BY: J. CHRISTIAN LEWIS  
ASSISTANT ATTORNEY GENERAL**

For Defendants Meta Platforms, Inc. f/k/a Facebook, Inc.;  
Facebook Holdings, LLC; Facebook Operations, LLC; Facebook  
Payments, Inc.; Facebook Technologies, LLC; Instagram, LLC;  
Siculus, Inc.; and Mark Elliot Zuckerberg:

COVINGTON & BURLING LLP  
1999 Avenue of the Stars, Suite 3500  
Los Angeles, California 90025

**BY: ASHLEY M. SIMONSEN, ATTORNEY AT LAW**

COVINGTON & BURLING LLP  
620 Eighth Ave  
New York, New York 10018

**BY: GREGORY L. HALPERIN, ATTORNEY AT LAW**

COVINGTON & BURLING LLP  
Sales Force Tower  
415 Mission Street, Suite 5400  
San Francisco, California 94105

**BY: ISAAC D. CHAPUT, ATTORNEY AT LAW  
E. KATE PATCHEN, ATTORNEY AT LAW**

COVINGTON & BURLING LLP  
One City Center  
850 Tenth Street, NW  
Washington, D.C. 20001

**BY: MICHAEL X. IMBROSCIO, ATTORNEY AT LAW**

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

**APPEARANCES:** (CONTINUED)

For Defendant Snap, Inc.:

MUNGER, TOLLES & OLSON LLP  
560 Mission Street, 27th Floor  
San Francisco, California 94105

**BY: JONATHAN H. BLAVIN, ATTORNEY AT LAW**

MUNGER, TOLLES & OLSON LLP  
355 South Grand Avenue, 35th Floor  
Los Angeles, California 90071

**BY: ROWLEY J. RICE, ATTORNEY AT LAW**

For Defendants TikTok Inc., ByteDance Inc., ByteDance Ltd.,  
TikTok Ltd., and TikTok, LLC:

FAEGRE DRINKER BIDDLE & REATH LLP  
300 North Meridian Street, Suite 2500  
Indianapolis, Indiana 46204

**BY: ANDREA PIERSON, ATTORNEY AT LAW**

KING & SPALDING LLP  
1180 Peachtree Street  
Atlanta, Georgia 30309

**BY: GEOFFREY DRAKE, ATTORNEY AT LAW**

For Defendants YouTube, LLC and Google LLC:

WILSON, SONSINI, GOODRICH & ROSATI  
650 Page Mill Road  
Palo Alto, California 94304

**BY: ANDREW KRAMER, ATTORNEY AT LAW**

MORGAN, LEWIS AND BOCKIUS, LLP  
300 Grand Avenue, 22nd Floor  
Los Angeles, California 90071

**BY: YARDENA R. ZWANG-WEISSMAN  
ATTORNEY AT LAW**

Thursday - August 8, 2024

1:12 p.m.

P R O C E E D I N G S

---o0o---

**THE CLERK:** Court is now in session. The Honorable Peter H. Kang presiding.

Now calling 22-md-3047, In Re: Social Media Adolescent Addiction and Personal Injury Products Liability Litigation.

Counsel, when speaking, please approach the podium and state your appearance for the record and court reporter.

(Pause in proceedings.)

**THE COURT:** All right. Good afternoon.

**ALL:** Good afternoon.

**THE COURT:** I apologize for the problem with my laptop.

Okay. As I try to remember to do, I'm going to give you the updated list of *pro bono* cases that need volunteer counsel.

For those of you who were not here the last time I announced these, the Court has a robust *pro bono* program, and there are always good cases that need good counsel, and I've decided to take advantage of so many of you in the room here to try to help the program out.

There's one case in front of Judge Illston involving Napa Hospital where I think it's a civil rights claim that needs *pro bono* help.

There is -- I think there are two prisoner civil rights

1 cases that still need help. One in front of Chief Magistrate  
2 Judge Donna Ryu. It's a civil rights claim involving  
3 Contra Costa's Detention Center.

4 And then there's another case in front of  
5 Judge Gonzalez Rogers which involves the California  
6 Rehabilitation Center in Norco, California, again, a civil  
7 rights claim.

8 So I think I've said this before, but at the risk of  
9 repeating myself, when I was a young lawyer, I got some of my  
10 best first in-court experience doing *pro bono* cases. These are  
11 great opportunities for young lawyers, even senior lawyers, who  
12 want to get more opportunities for stand up -- for standing up  
13 in court and maybe taking things to trial.

14 So please, fedpro -- f-e-d-p-r-o -- @sfbar.org is their  
15 email address. You can also look them up on the S.F. Bar  
16 Association's website. They are always looking for good  
17 counsel, and certainly, the Court appreciates anything. So  
18 tell folks in your firms, tell your friends, tell people in  
19 your bar associations about the cases.

20 Okay. So I'm going to -- to try to encourage more of  
21 this, I'm going to give a little bit of praise to the parties  
22 in the plaintiffs' TikTok defendants' dispute who emailed us  
23 last night to say that you'd resolved the -- at least the  
24 reportedly unripe dispute, but resolved the dispute involving  
25 RFPs 198, 200 to 205. So congratulations to you-all.

1 The Court appreciates that, and that's exactly the kind of work  
2 that I know you're doing, you're working on, but I want to  
3 encourage that by giving those folks a shout-out at the  
4 beginning.

5 All right. So shall we turn to the ripe disputes in the  
6 DMC statement? Unless there's something preliminary somebody  
7 wants to talk about.

8 **MS. HAZAM:** Good afternoon, Your Honor. Lexi Hazam  
9 for plaintiffs.

10 **THE COURT:** Good afternoon.

11 **MR. IMBROSCIO:** Good afternoon, Your Honor. Michael  
12 Imbroscio from Covington & Burling on behalf of Meta.

13 **THE COURT:** Good afternoon.

14 Okay. So --

15 **MR. IMBROSCIO:** It's a preliminary matter, actually.

16 **THE COURT:** Oh, sure. Go.

17 **MS. HAZAM:** If we may, Your Honor.

18 **THE COURT:** Yes.

19 **MS. HAZAM:** Before you get to the ripe disputes, one  
20 of which we would ask the Court to allow us more time on  
21 because we are making progress. We can get to that in a  
22 moment.

23 But, first, we wanted to advise the Court that the parties  
24 are in discussions regarding a possible proposed joint  
25 extension of the schedule.

1           **THE COURT:** Okay.

2           **MS. HAZAM:** So we are in discussions about that, and  
3 we do not have anything further that we can report to the Court  
4 at this moment.

5           **THE COURT:** Okay.

6           **MS. HAZAM:** But we are continuing those discussions,  
7 and we will report to the Court on them as soon as we are able.

8           And we wanted to alert the Court to that, particularly  
9 given that the schedule otherwise has some upcoming deadlines  
10 that we would be proposing to move that would take place  
11 shortly after the next status conference, including the  
12 deadline for substantial completion of production of documents.

13           **THE COURT:** Is this an overall case schedule or just  
14 the discovery schedule?

15           **MS. HAZAM:** Overall, including aspects of discovery.

16           **THE COURT:** Okay. I believe Judge Gonzalez Rogers  
17 took her CMC off calendar this week.

18           **MS. HAZAM:** She did.

19           **THE COURT:** This month, or whatever it is.

20           **MS. HAZAM:** We would have reported, I think, the same  
21 to her tomorrow and have not been able to, but we will explain  
22 if we are able to make a written submission.

23           **THE COURT:** I glanced at your CMC statement. Did you  
24 mention it in there?

25           **MS. HAZAM:** We did not because it was not yet



1 something we could mention.

2 **THE COURT:** Well, she might not have canceled it if  
3 you'd put that in there, but I can't speak for her. But I  
4 certainly -- I'm certainly interested in it; so, yes, keep me  
5 informed --

6 **MR. IMBROSCIO:** We will.

7 **THE COURT:** -- as to all that.

8 And, obviously, if the parties can agree on dates, which  
9 I'm sure you will, then, you know, unless I see something  
10 really unusual in that, I don't think I'll have much trouble  
11 working with those new dates with you-all. So let me know.

12 **MR. IMBROSCIO:** Thank you, Your Honor.

13 **MS. HAZAM:** Thank you, Your Honor.

14 **THE COURT:** In the meantime, because of the way  
15 things -- because she didn't have her CMC today so she  
16 didn't -- you weren't able to get any indication from her on  
17 whether she was going to allow dates to slip or not. You said  
18 substantial completion. We are starting to come up on some  
19 interim deadlines.

20 I'm going to assume you're all going to be able to work  
21 out individual extensions of things like substantial completion  
22 and working around that while she works on formally approving  
23 any changes of dates. But if you need help on that, you can't  
24 come -- raise it with me because, obviously, if the whole  
25 schedule is going to change and it's just a matter of just the

1 procedure of getting it formalized and you're bumping up  
2 against another deadline, I don't want either side or any party  
3 to feel like they can be jammed because of that. All right?  
4 So be aware that I'm sensitive to that.

5 **MR. IMBROSCIO:** Thank you, Your Honor.

6 **MS. HAZAM:** Understood, Your Honor. Thank you.

7 **THE COURT:** Okay.

8 All right. Who's talking about discovery limits?

9 **MS. PIERSON:** Your Honor, just one other preliminary  
10 matter.

11 Andrea Pierson, Faegre Drinker, on behalf of the TikTok  
12 defendants.

13 Just one other preliminary matter. Within the status  
14 section of the report, we addressed the device imaging  
15 production --

16 **THE COURT:** Yeah.

17 **MS. PIERSON:** -- issue, and we've been filing each  
18 week a series of joint status reports on where we are on that.

19 We thought it might be helpful to just advise the Court of  
20 the latest information that we have with respect to that --

21 **THE COURT:** Okay.

22 **MS. PIERSON:** -- and then also perhaps to get some  
23 direction from the Court on next steps.

24 **THE COURT:** Okay.

25 **MS. PIERSON:** We have been conferring and making some

1 progress, as you can see from the length of the reports that  
2 we've been providing; but at a very high level, as you -- as we  
3 know today or as the facts stand today, we know that the  
4 bellwether plaintiffs used at least 93 different devices to  
5 access the defendants' platforms, 38 of which are still within  
6 the possession's [sic] custody.

7 We've been informed by the plaintiffs as recently as last  
8 night that of the 38 devices identified as being in plaintiffs'  
9 possession, thus far only ten devices from three plaintiffs  
10 have undergone full, complete forensic imaging.

11 The parties have submitted three status reports since July  
12 the 11th, and we have another status report due to you today.  
13 Perhaps this report might take the place of that, or we're  
14 happy to --

15 **THE COURT:** I actually read that statement in the DMC  
16 statement to mean you were just going to give me the report  
17 verbally, not that you were going to file a separate --

18 **MS. PIERSON:** That's perfect.

19 **THE COURT:** It didn't seem logical for you to write  
20 something if you were just going to tell me anyway.

21 **MS. PIERSON:** That's perfect. So that's the report on  
22 the statistics.

23 You know, I will say from the defendants' perspective, we  
24 feel like very little progress has been made since we met with  
25 you on July the 11th, and we certainly think we need to be

1 moving faster with respect to this issue. Some --

2 **THE COURT:** So on that point, I didn't drill down into  
3 it at the last DMC, and I know you weren't the one speaking to  
4 this; but certainly, the impression I got was that all the  
5 devices in the -- in the plaintiffs' side's possession and  
6 custody had been or were, you know, substantially complete to  
7 being imaged. There was no -- nobody had told me that only ten  
8 of 38 by that point had been imaged; right?

9 And part of the argument made to me at the time was that  
10 to avoid complete inspection and handover of the devices, you  
11 were prepared with the images to allow -- right? That was kind  
12 of the premise on which I acted.

13 So the question then is: What's taking so long if you've  
14 got 38 in possession?

15 **MR. ANDREWS:** Yeah, Your Honor. Patrick Andrews,  
16 Lieff Cabraser, for the plaintiffs.

17 So my understanding is -- and I can't speak for my  
18 colleague who was here at the last conference presenting that  
19 issue, but I believe she was referring to the logical imaging  
20 that had been done before, and the imaging -- many more than  
21 ten devices have undergone that level of imaging.

22 **THE COURT:** So let me stop you there because I didn't  
23 drill down. How many have been logically imaged?

24 **MR. ANDREWS:** My understanding is there's -- for every  
25 bellwether plaintiff, they have at least one device that has

1 been logically imaged, so -- and then, additionally, more  
2 devices. So my understanding is around 15 devices have been  
3 imaged. Then --

4 **THE COURT:** Okay. How much more time are you going to  
5 need to finish imaging, just logically imaging the remaining --  
6 what? -- 13 -- 23 devices? I want to do the math right.

7 **MS. PIERSON:** Just to clarify, Judge, a logical image  
8 is not a full bit-for-bit image, which plaintiffs had agreed to  
9 provide to us, and we require a full forensic image.

10 **THE COURT:** Okay. So is logical imaging quick -- done  
11 more quickly than a full bit-for-bit image?

12 **MR. ANDREWS:** Yes, it is done more quickly. And  
13 that's what we initially did for our bellwether plaintiffs'  
14 devices.

15 **THE COURT:** But not all 38?

16 **MR. ANDREWS:** But not all 38. So we did that for  
17 their current devices.

18 But the full forensic imaging requires a much more  
19 in-depth process that our current vendor was not able to  
20 fulfill for our bellwether clients -- our bellwether clients.

21 So we had to -- one thing that we've done since that  
22 hearing, Your Honor, is we've identified and hired a new vendor  
23 that can perform this level of forensic imaging. We've hired  
24 him to perform that imaging for all of the bellwether devices.

25 We've worked with him on a process for collecting all of

1 the devices across the 12 bellwether plaintiffs, which includes  
2 obtaining replacement cell phones for plaintiffs that are  
3 having their current devices imaged. Because without  
4 replacement devices, they would have to be without their phones  
5 for potentially weeks, and it's the type of thing that they  
6 need to have on hand in case they have an emergency and need to  
7 contact their parents.

8 So there are a lot of, like --

9 **THE COURT:** One person talk at a time. All right?

10 The logistics of getting this done, you can talk about  
11 that, but I'm really more concerned about the time. How  
12 long -- when are you going to be done? What's taking so long?

13 **MR. ANDREWS:** So in terms of how much longer we need,  
14 we need probably until the end of this month to complete it in  
15 total, but within --

16 **THE COURT:** For all 38?

17 **MR. ANDREWS:** For not all 38. We've identified 31  
18 relevant devices. So 38 devices have been identified as being  
19 within the possession, custody, and control. There have been  
20 31 relevant devices that we intend on imaging -- doing the full  
21 forensic imaging on.

22 **THE COURT:** When are those going to get done?

23 **MR. ANDREWS:** With -- before the end of the month.

24 **THE COURT:** That's a three-week span. So when you say  
25 "before the end of the month," you mean next week? tomorrow?

1           **MR. ANDREWS:** Well, many of them will be imaged within  
2 the next week.

3           **THE COURT:** How many?

4           **MR. ANDREWS:** I don't have a figure on hand, but at  
5 least five will be imaged by the end of next week.

6           **THE COURT:** So you're doing five a week. Is that  
7 what --

8           **MR. ANDREWS:** Well, it depends on the bellwether  
9 plaintiff, Your Honor, because everyone is at a different stage  
10 in obtaining a replacement device and shipping their current  
11 devices to the vendor to get them imaged.

12           So right now, we're at the place -- we're at a point where  
13 I can confidently say at least five will be imaged by the end  
14 of next week because they're in the process of being sent to  
15 the vendor for imaging.

16           **THE COURT:** How many have completely been imaged?

17           **MR. ANDREWS:** Ten.

18           **THE COURT:** Completely?

19           **MR. ANDREWS:** Completely.

20           **THE COURT:** And we all understand what "completely  
21 imaged" means; right?

22           **MS. PIERSON:** We do, Your Honor. It's --

23           **THE COURT:** And that satisfies the defendants?

24           **MS. PIERSON:** It does. It's a full file forensic  
25 image.

1           **THE COURT:** Have you started running searches on those  
2     ten?

3           **MR. ANDREWS:** We have not begun searches on the full  
4     forensic imaging yet, but we have run searches on the logical  
5     images and began productions on those.

6           **THE COURT:** That's 15. So that leaves us another 16  
7     to get done between -- in the -- so you can get 16 done by the  
8     end of August, is what you're telling me, the other 16?

9           **MR. ANDREWS:** I believe so, Your Honor; and if for  
10    some reason we run into a snag, we can update the defendants  
11    and work with them on that. But I don't have any reason to  
12    think that we can't get the remainder of them done by the end  
13    of this month.

14          **THE COURT:** Is there any reason why you can't be using  
15    a second vendor to, like, double-track this?

16          **MR. ANDREWS:** There are only so many vendors that can  
17    do this level of imaging, and coordinating with one vendor is  
18    ideal because we have a lot of chain-of-custody issues and  
19    things that we want to make sure that we're keeping everything  
20    consistent.

21          **MS. PIERSON:** Judge, I apologize for interrupting, but  
22    I'm told that on the Zoom, they're not able to hear your  
23    microphone.

24          **THE COURT:** My microphone?

25          **MS. PIERSON:** Yes. Apologies.



1           **THE CLERK:** Just his?

2           **MS. PIERSON:** Just his.

3           **THE COURT:** Wow. It's definitely on. Why don't you  
4 just turn it up.

5           What I say is less important than what they say anyway.

6                               (Laughter.)

7           **THE COURT:** Okay. Well, okay. So when are you going  
8 to start rolling productions of the complete searches on the  
9 ten completed ones?

10          **MR. ANDREWS:** So the other issue, Your Honor, is that  
11 there is a real CSAM concern because these are all teenagers  
12 sending their primary devices in to our vendor. There are a  
13 lot of issues in terms of wanting to make sure that we do a  
14 full check for and the vendor is confident that there is no  
15 CSAM on any of these devices.

16          So that is the first step, once they get imaged, is making  
17 sure that that doesn't exist.

18          But -- and the ones that have been imaged so far, we have  
19 run into those issues. So we're working through a protocol of  
20 handling those issues and then quickly producing documents. I  
21 can't give you a date by which those issues will be resolved,  
22 but we're working as quickly as we can.

23          **THE COURT:** Can you work up some very -- it doesn't  
24 have to be a formal protocol. Can the parties work up just an  
25 agreement that if something happens to be inadvertently

1 produced that is CSAM, there will be, you know, a procedure in  
2 place to delete it, claw- -- or do whatever is necessary under  
3 the law to handle it?

4 **MS. PIERSON:** Certainly, Your Honor.

5 **THE COURT:** Okay. So if you work out that agreement,  
6 that should alleviate the concern of having to -- worrying  
7 about -- overly about CSAM on the devices.

8 I don't want there to be delays because of issues like  
9 this where you can work it out kind of after the fact, similar  
10 to a privilege clawback approach; right? I mean, I understand  
11 there are legal issues with CSAM, but you can work out an  
12 agreement between the parties to try to mitigate those things  
13 after the fact and get -- at least get the data to the other  
14 side. Do you understand?

15 **MR. ANDREWS:** Understood.

16 **THE COURT:** Okay. I'm going to give you till  
17 August 30th to finish all the -- what you're calling the  
18 hundred percent complete imaging of all the devices; right?

19 And you're going to finish five by the end of next week,  
20 I'm going to expect a minimum of five the following week, and  
21 then the remainder by the end of August; right?

22 And so -- and I'll say this: If any devices aren't fully  
23 imaged and, you know, in the pipeline for searches and  
24 production by that time, I'm going to seriously start  
25 reconsidering, for any such devices, a full inspection

1 available to the defendants. Do you understand that?

2 **MR. ANDREWS:** Understood, Your Honor.

3 **THE COURT:** Because it was sold to me, the idea was  
4 sold to me and the argument was made -- not by you but your  
5 side -- to limit and prevent a full inspection because the  
6 imaging had been so complete at that time, and there was no  
7 indication given to me that it was not as complete as you're  
8 now explaining to me. Do you understand?

9 **MR. ANDREWS:** Understood, Your Honor.

10 **THE COURT:** And I don't understand if there was a  
11 problem with the previous vendor, why you didn't act more  
12 expeditiously last month -- right? -- to get on top of this.  
13 It's not -- it's not an issue that your side has been unaware  
14 of. Okay? So all I can tell you is, you know, the ball is in  
15 your court to work quicker and as quickly as possible on this.  
16 Okay?

17 **MR. ANDREWS:** Understood, Your Honor.

18 **THE COURT:** All right.

19 **MS. PIERSON:** Your Honor, if I may, I have just a  
20 couple of other asks.

21 **THE COURT:** Yeah.

22 **MS. PIERSON:** Certainly, our understanding following  
23 the July 11th hearing was that a rolling production would start  
24 of the forensic images that had already been made as to the  
25 databases that the plaintiffs volunteered to give to us. That

1 obviously hasn't happened, and you understand our concern with  
2 the pace of the imaging itself.

3 But there are two other things that we think would be  
4 helpful to keep us moving on parallel tracks.

5 **THE COURT:** First, I know you already raised it in the  
6 status report. I can't believe you can't finalize search  
7 terms. All right. I mean, we've talked about this in a larger  
8 context, other things, and I think I've issued opinions in  
9 other cases on this.

10 I mean, lawyers -- you don't want me in there tinkering  
11 with search terms for you -- right? -- because I'm not going to  
12 come up with the best resolution at that granular level of  
13 detail. This is something that lawyers are uniquely positioned  
14 to do. All right? And, again, it's not an issue that as if  
15 you didn't know that it was out there.

16 So I want you to finalize your agreed-upon search terms by  
17 the end of next week. There's no reason to delay that.  
18 All right? And there's no reason why it can't be done in that  
19 time.

20 **MS. PIERSON:** Related to that, Your Honor, we'd ask as  
21 well that, then, the search terms be applied and that  
22 production of the text-searchable files begin, you know,  
23 immediately and be completed within some relatively short  
24 period of time.

25 **THE COURT:** I think I said that at the last DMC.

1 Certainly, as soon as the search terms are done, I want rolling  
2 productions of all the devices that are already imaged or --  
3 and as they come online as being imaged; that there be no delay  
4 in running those search terms on those devices. Okay?

5 **MR. ANDREWS:** Understood, Your Honor. Many of the  
6 text-searchable ESI sources from these devices are included in  
7 the logical image, and we've already begun production on those.

8 **THE COURT:** That's great. Good.

9 **MS. PIERSON:** I think one challenge we have with that,  
10 Your Honor, is that to the extent that some limited data has  
11 been produced in response to requests for production, it's not  
12 correlated to any particular device.

13 So you remember when we spoke in -- at the last hearing, I  
14 talked about putting together the threads of this tapestry.  
15 You know, it's a more difficult way to do it than simply  
16 producing the entire forensic image. If we're to put the  
17 threads together to form the tapestry, we need to know what  
18 device the data came from. It can't just be a data dump  
19 without correlation to a device.

20 **MR. ANDREWS:** If I may, Your Honor, we've offered on  
21 repeated occasions to set up a meet and confer with our  
22 respective ESI vendors to talk about how to go about making  
23 such productions and how we can work on a system to provide  
24 them with the information that they want, and we've yet to hear  
25 back from the defendants on a time to schedule such a -- such a

1 meet and confer.

2 **THE COURT:** That meet and confer, since it's going to  
3 require the ESI vendors and we're not going to rash it out  
4 here, I agree something like that has to be done because,  
5 again, they need to know from which device the data came from.

6 I assume -- maybe I'm being simplistic. I assume it's a  
7 matter of adding a field to the data or a header or something;  
8 but there should be a way, either in the file as it's produced  
9 or in the name of the file, to identify which device it came  
10 from. I mean, you did give them the chart of devices, so it  
11 isn't like you don't know which devices will go with which  
12 data.

13 So work that with the ESI vendors by the end of next week.  
14 I don't -- again, this is one of those things where the ESI  
15 folks really should be able to work this out.

16 **MR. ANDREWS:** Yes. Understood, Your Honor.

17 And just one additional point on the productions to date.  
18 The search terms have not upheld plaintiffs from making  
19 productions. We've been making productions based on our  
20 initially proposed search terms. So any specific nuances that  
21 we're kind of finalizing and finishing, those aren't holding  
22 productions up.

23 **THE COURT:** Good. Good. Because we need to keep this  
24 train rolling. So, keep it rolling.

25 **MS. PIERSON:** Your Honor, related to that, would it be

1 appropriate to set a deadline? If we are to agree to search  
2 terms by the end of next week, could we set a deadline maybe  
3 30 days after that for production of information from the --

4 **THE COURT:** No. I want a status report -- let's see.  
5 Today is the 8th. I want a status report on Monday, the  
6 19th -- all right? -- to update me on where you are on the  
7 search terms, where you are on fully imaging, how many are  
8 still in the pipeline to be imaged, and all that.

9 One of these status reports -- I think the first of these  
10 status reports had, it was like a meta dispute about -- not to  
11 make a joke -- had a hyperdispute or a second-level-order  
12 dispute about what to put in the reports. I think that's  
13 actually in this month's DMC statement.

14 You know, this is just a status report on this one little  
15 piece of it. If you're still working things out, I think -- I  
16 mean, you can certainly take philosophically the approach that  
17 we take in the DMC status reports. If there's a dispute and  
18 you've fully met and conferred on it, you can identify it as a  
19 ripe dispute and tell me. And if there's a dispute that you  
20 both reasonably think is on the horizon that's going to come to  
21 a head and it's going to require Court intervention, you can  
22 give me a heads-up on that in the same kind of summary form  
23 you-all do in the DMC status reports.

24 But I don't need briefing on all the disputes because the  
25 status reports are not the place for full briefing; it's to

1 give me the status on what's coming up.

2 **MS. PIERSON:** Thank you.

3 **THE COURT:** But more importantly, I'm putting your  
4 feet to the fire. I want those device- -- I mean, in the grand  
5 scheme of things, it's not that many devices. Get them done.  
6 Okay?

7 **MR. ANDREWS:** Understood, Your Honor.

8 **THE COURT:** Okay.

9 **MS. PIERSON:** There is a third parallel track. And I  
10 promise it's the last one, Your Honor.

11 I mean, there -- as you can tell from the status reports,  
12 there are ten different things that we could bring to you  
13 today. We're bringing really just three. One is the forensic  
14 images and the protection; two is the search terms.

15 But then the third issue is, you may recall we had a long  
16 discussion about device identifying information and app  
17 identifying information. We attached to the status reports, as  
18 Appendix A, a table that lays out the columns for that. We're  
19 still missing a lot of device identifying information.

20 And this matters because we, on our side, have to work  
21 with our expert and our vendor to think about what databases  
22 are contained within each device that we might need.

23 The list that we started with was the list that the  
24 plaintiffs volunteered at the last hearing, but we anticipate  
25 there will be additional databases that we require in order to



1 get a full picture of device usage. So our request is just for  
2 the device identifying information.

3 **THE COURT:** One person at a time.

4 What's the hangup in getting them the full charts?

5 **MR. ANDREWS:** So we've -- we've identified all of the  
6 relevant devices in our charts, and then we've identified  
7 applications installed on many of those devices.

8 The remainder of the information is stuff that we have  
9 offered to meet and confer about with our ESI vendors so that  
10 we can get a full picture of what it is that they're really  
11 looking for.

12 The system-level and -- the operating-system-level and the  
13 knowledgeC-type database information, we really have to  
14 complete those full file imaging images in order to have a full  
15 picture of what's available.

16 **THE COURT:** Maybe I'm misunderstanding. What you're  
17 looking for is just what -- the device identifying data? Like  
18 what model it is and all that?

19 **MS. PIERSON:** Make, model --

20 **THE COURT:** And then what --

21 **MS. PIERSON:** -- operating system.

22 **THE COURT:** And what apps are loaded on that device?

23 **MS. PIERSON:** What apps are loaded.

24 It's the things in Appendix A that we listed. These  
25 aren't things that the ESI vendors have to talk about. They're

1 objective on the device.

2 **THE COURT:** So what's the --

3 **MR. ANDREWS:** So the stuff that we have, so the  
4 information about the make, the model, the applications  
5 installed on the device, we've supplied to the defendants.

6 **THE COURT:** I'm hearing you haven't.

7 **MS. PIERSON:** It's incomplete. It's incomplete. I  
8 understand that it may take time. We might not get it all on  
9 exactly the same day.

10 But you recall the conversation that we had about how  
11 knowing what operating system is on the device is critical. It  
12 changes the databases within the device and how we identify  
13 which databases we require. This is information clearly on the  
14 device. It's not hard to find.

15 **THE COURT:** Again, was there a misunderstanding or  
16 lack of communication here on what it is they're looking for in  
17 this -- for this set of data?

18 **MR. ANDREWS:** So this is the only time I've heard it  
19 framed as the operating system that's on the device, not the  
20 hist- -- the operating system history on the device.

21 And for the operating system history, we need to do the  
22 full file image.

23 For the operating system on the device, we're able to  
24 supply that information quickly upon imaging the devices, but  
25 right now many of the devices are in transit. So it's

1 something that the most efficient process is to complete the  
2 imaging and just provide the operating system and the IMEI-type  
3 information at the time we perform the imaging.

4 **MS. PIERSON:** I don't think this is --

5 **THE COURT:** While it's probably easy, if they had the  
6 phone in hand, to tell you the operating system. (A) if  
7 they're in transit and if you want the historical operating  
8 system, that's not something you can look at from just looking  
9 at the phone.

10 **MS. PIERSON:** I think the short answer and solution to  
11 this, Your Honor, is we attached Appendix A; it's a table. The  
12 plaintiffs need to complete the table. And if that happens,  
13 you know, on a rolling basis, we understand. There may be some  
14 devices that are in transit. But they need to complete  
15 Appendix A. It's all of the information we discussed.

16 **THE COURT:** How hard is it to complete Appendix A  
17 per device?

18 **MR. ANDREWS:** Your Honor, Appendix A is a 148-page  
19 wish list that the defendants have. It's not a simple thing.  
20 It's something that we need to be able to work with them on  
21 identifying what it is they actually need rather than filling  
22 out 148 pages of discovery on discovery.

23 **MS. PIERSON:** It's not 148 pages. It's a simple Excel  
24 chart. Here -- we can confer, if that's --

25 **THE COURT:** There hasn't been --

1           **MS. PIERSON:** -- necessary but --

2           **THE COURT:** I don't think -- it doesn't sound to me  
3 like there's been sufficient or even in-depth meet and confer  
4 as to what needs to be on that chart and how big the chart has  
5 to be and what exactly you're looking for in the chart.

6           So by next Friday, get together, talk about it, try to  
7 come -- not "try" -- come to agreement on what that chart  
8 should be. It should be reasonable -- right? -- because you  
9 want it quicker. The shorter it is, the more quickly you can  
10 get it; right? So there's -- because you know you're going to  
11 get other data on the back end anyway; right? So --

12           **MS. PIERSON:** That's fine, Your Honor. We just need a  
13 chart with identifying information for the devices and the  
14 apps, and we need it completed.

15           **THE COURT:** Okay. You understand it may not have a  
16 hundred percent of what you're looking for at the end of day,  
17 but it may be good enough for your purposes going forward.  
18 Okay?

19           **MS. PIERSON:** Understood, Your Honor.

20           **THE COURT:** All right. So meet and confer on it. If  
21 the chart is as simple as what I hope it will be, then it won't  
22 require, you know, the ESI vendors to be involved because,  
23 presumably, any layperson could open up the phone and take  
24 screenshots of what apps are on it and what the current OS is.

25           **MR. ANDREWS:** Understood, Your Honor.

1           **THE COURT:** Okay. If it's that simple. I don't know  
2 if it is. But try to work it out. I'm encouraging you to work  
3 it out.

4           **MS. PIERSON:** Thank you, Your Honor.

5           **MR. ANDREWS:** Thank you, Your Honor.

6           **THE COURT:** Okay. And I'll look for your status  
7 report on the 19th.

8           Okay. So that completes everything on the joint status  
9 report on forensic imaging and device data; correct? Is there  
10 anything else in this report we need to go through?

11          **MR. DRAKE:** It doesn't sound like it.

12          Jeffrey Drake, King & Spalding, for the TikTok defendants.

13          **THE COURT:** All right. So are we -- where are we now?

14          **MR. DRAKE:** Well, I had a related issue, Your Honor,  
15 that I could save to the end, but I thought I might just raise  
16 it right now, which relates to the status and pace of discovery  
17 as it relates to the school district plaintiffs.

18          We provided an update in the joint report. I think it's  
19 fair to say that it's moving a little bit more slowly than we  
20 would like. And I think one of the big things that's slowing  
21 it down at the moment that I wanted to raise, because it  
22 relates to the topic that Ms. Pierson just raised, is that of  
23 search terms and custodians as it relates to the school  
24 districts, which, of course, are, unlike the personal injury  
25 plaintiffs or even their phones, multimillion-dollar or

1     multibillion-dollar corporate organizations.

2             We basically are making almost no progress on the search  
3     terms and custodians at this point, Your Honor; and I was  
4     wondering if, just like you did with respect to the defendants  
5     back in May, we could just put a deadline down for completing  
6     those conferrals, maybe August 23rd or something around then,  
7     and then we provide a status update to Your Honor.

8             **MR. WARREN:** Your Honor, may I be heard, please?

9             Previn Warren for the plaintiffs.

10            This is the second issue today that the defendants are  
11     attempting to raise that was not flagged as a ripe dispute  
12     heading into this conference.

13            I think that the parties ought to have an opportunity,  
14     pursuant to Your Honor's standing order, to actually talk  
15     through these issues and come to terms on what we can agree to  
16     before they just get sprung on the other party. And so I  
17     really object to this even being a topic that Mr. Drake can  
18     stand up and try to interject. We haven't even gotten to the  
19     actual disputes that the parties attempted to raise here, which  
20     is what we came prepared to discuss.

21            If there's an issue about the pace of productions, we're  
22     happy to address the same issues on defendants' side, how slow  
23     they have been in actually rolling out custodial files, how  
24     they stonewalled actually producing hyperlinked documents --

25            **THE COURT:** Let's not expand the scope of --

1           **MR. WARREN:** I agree completely. Let's not.

2           **THE COURT:** Okay. So I'm going to give you probably  
3 the same admonition I've given in previous DMCs; right? Work  
4 harder on this stuff. If there's an agreement to meet and  
5 confer -- if there's a willingness to meet and confer, which  
6 there should be and it sounds like there is, meet and confer on  
7 it.

8           You know, at this point, I'm not going to require, like,  
9 an interim status report; but certainly, I would expect to see  
10 progress to have been made between now and the next DMC on this  
11 unripe issue in the report there; and, hopefully, it will  
12 disappear and you will have worked everything out.

13           Because I'll just give you my general, same thing I said  
14 to the previous set of lawyers. You know, things like search  
15 terms and logistics on discovery, these are things lawyers  
16 should be able to work out.

17           **MR. DRAKE:** We couldn't agree more, Your Honor, and  
18 it's -- we look forward to having a meet and confer and  
19 actually getting some on the books and moving forward with  
20 this. So thank you for your --

21           **THE COURT:** I'm hearing a willingness --

22           **MR. DRAKE:** Thank you for your help.

23           **THE COURT:** -- to meet and confer, so you've got that  
24 willingness on both sides.

25           **MR. WARREN:** Always.

1           **MR. DRAKE:** Wonderful. Thank you.

2           **MR. WARREN:** We have been, and we'll continue to do  
3 so.

4           **MR. DRAKE:** Great. We'll get something scheduled  
5 immediately. Thank you, Judge.

6           **THE COURT:** Okay.

7 All right. Anything else preliminary before we get to the  
8 ripe issues?

9 Okay. Who's going to talk about discovery limits, then?

10          **MR. WARREN:** Your Honor, Previn Warren for the  
11 personal injury school district plaintiffs. I'm happy to  
12 address that for our side.

13          **MS. SIMONSEN:** Good afternoon, Your Honor. Ashley  
14 Simonsen, Covington & Burling, for the Meta defendants and  
15 speaking on behalf of the defendants.

16          **THE COURT:** Okay. You know, again, it's line drawing  
17 here; right? I mean, one side wants 15 extra rogs and 17 extra  
18 RFAs; the other side wants to do two and two or maybe some -- I  
19 don't understand why you weren't able to work this out --  
20 right? -- because it's horse-trading in terms of numbers;  
21 right?

22 I can draw some lines for you, but I don't think anybody's  
23 going to be -- neither side is going to be happy with it. I'm  
24 happy to do it now if you want me to draw some lines for you.  
25 Make your arguments. But if you tell me you'd rather try to



1 horse-trade on this and work out a deal, I'm open to that too.

2 **MS. SIMONSEN:** Your Honor --

3 **MR. WARREN:** Your Honor, we're very much open to  
4 horse-trading either by agreement or by judicial fiat, as you  
5 would prefer.

6 I think the issue here is that we have wanted and tried to  
7 engage in a discussion about numerical limits that would apply  
8 to case-specific written discovery. The problem is defendants  
9 have taken the position that it's zero because the discovery  
10 limits order was already entered and that's it. So we've been  
11 essentially negotiating against ourselves.

12 We made an initial offer that would have given us the same  
13 amount of written discovery that the defendants were getting  
14 against the bellwethers. We subsequently came back and reduced  
15 those numbers.

16 All we've really seen from the defendants is attempting to  
17 cut into our existing limits by allocating certain  
18 interrogatory and request for admissions to --

19 **THE COURT:** Well, I did see -- there was, at one point  
20 at least, an offer for two extra or something, I mean, over and  
21 above the 45. That was on the table. It looks like it was --  
22 maybe I'm misreading. But I'm going to -- okay. So I'm going  
23 to cut that part short.

24 **MR. WARREN:** Sure.

25 **THE COURT:** I think I've said -- I think I even said

1 at the time of the DLOs, but I think I've said at other DMCs,  
2 if there's a good reason for extra discovery beyond certain  
3 limits that I've set and you have a good reason, not just  
4 because you want it, but there's actually a good, rational  
5 reason, I'm open to hearing it; right?

6 And so the defendants' position that the DLO is carved in  
7 stone and that no additions are allowed, I'm not going to  
8 uphold that. So to me, that's inconsistent with what I've said  
9 repeatedly, I think, through the course of this case.

10 With that in mind, would you rather try to work out a deal  
11 here, or do you want me to start drawing lines here based on  
12 arguments you want to make today?

13 **MS. SIMONSEN:** Well, I think, Your Honor -- Ashley  
14 Simonsen for the Meta defendants -- one point of clarification  
15 is not that our position was that they get zero case-specific  
16 RFAs and rogs. That's not our position at all.

17 **THE COURT:** Right. I understand. Your position was  
18 they could allocate some of the 45.

19 **MS. SIMONSEN:** Yes, precisely.

20 But I think with Your Honor's guidance in mind, that it  
21 sounds like you're open to the parties negotiating  
22 case-specific RFA and rog limits in add- -- that would be in  
23 addition to the 45.

24 I think we probably should go back to the negotiating  
25 table and confer further with plaintiffs. I imagine we can

1 reach an agreement.

2 **THE COURT:** Okay. And I -- to be -- this touches on  
3 another issue that is raised, I know we're going to bring up  
4 later.

5 This applies to the JCCP as well -- right? -- because the  
6 scope of discovery where it overlaps both cases, I think  
7 Judge Kuhl was pretty clear that I should be the one, at least  
8 as an initial matter, to hear that if it's, obviously, only  
9 specific. And so things like numerical limits cuts across all  
10 the plaintiffs across all the cases, and so I just want to make  
11 sure everybody's clear on that.

12 Is there somebody from the JCCP here?

13 **MR. WARREN:** Mr. VanZandt is here. He's one of the  
14 co-leads in the JCCP.

15 **THE COURT:** I just want to make sure there is somebody  
16 here.

17 Why don't you introduce yourself, for the record.

18 **MR. VANZANDT:** Sure. Joseph VanZandt, Beasley Allen,  
19 for the JCCP plaintiffs.

20 And, yes, you're right, Your Honor. That's our  
21 understanding from Judge Kuhl's minute order in the last  
22 hearing, is that Your Honor would set numerical limits.  
23 Judge Kuhl did indicate that the -- some of the initial RFAs  
24 that the JCCP plaintiffs have issued were proper and defendants  
25 would respond to those but did defer to Your Honor to set the

1 numerical limits.

2 **THE COURT:** Okay. So I want you-all -- whether you  
3 appoint the MDL lawyer -- some lawyer on the MD- -- on the  
4 plaintiffs' side, whether it's MDL or whatever, to be the point  
5 person to negotiate the limits with the defendants, that's up  
6 to you-all; right? But I want to make clear that this covers  
7 everyone. All right?

8 **MR. WARREN:** Yes, Your Honor. This is an issue that  
9 for us is very important to resolve quickly.

10 What I would ask is that perhaps Ms. Simonsen,  
11 Mr. VanZandt, and I can actually go try to resolve this; and if  
12 we're unable to, we literally bring it back to you today, by  
13 the end of this hearing, to see if we can get a resolution  
14 because we don't want this to bleed into the next DMC.

15 **THE COURT:** I'm around this afternoon. I'm not going  
16 home until, you know, after business hours, so...

17 **MR. WARREN:** All right. Thank you very much.

18 **MS. SIMONSEN:** Your Honor, we're always happy to speak  
19 with the plaintiffs. This is something that we will each have  
20 to take back to our respective clients. I know that my clients  
21 may not be available this afternoon to sign off.

22 **THE COURT:** Well --

23 **MS. SIMONSEN:** So I just want to flag that for  
24 Your Honor. But we're --

25 **THE COURT:** I'll say to you what I usually say when

1 I'm -- I don't think anybody here has had me as a settlement  
2 conference judge. Certainly, lawyers can reach a deal with  
3 that caveat and with the understanding that you'll go back and  
4 recommend it to your client; right? And so if that's as far as  
5 can be done, that's great, because I assume most clients are  
6 reasonable. If their outside lawyers say they should accept a  
7 deal, then it's just a matter of the formality.

8 **MS. SIMONSEN:** Thank you, Your Honor.

9 I did have one clarifying question.

10 **THE COURT:** Yeah.

11 **MS. SIMONSEN:** There were three special  
12 interrogatories served by the JCCP plaintiffs in the JCCP.  
13 Judge Kuhl indicated that Your Honor would decide whether those  
14 three interrogatories would come out of the limits that  
15 Your Honor would otherwise set for the JCCP and MDL plaintiffs  
16 on interrogatories.

17 And what I'm wondering is if you would like us to make  
18 part of our conferral with the plaintiffs the extent to which  
19 those three interrogatories are live, if you will, and part of  
20 whatever numerical limit they are permitted.

21 **MR. WARREN:** We have no problem making that part of  
22 the discussion. I think -- well, maybe this is a point of  
23 clarification on our side, but our understanding in -- with  
24 respect to the applicability of the numerical limits to the  
25 JCCP is that each bellwether, whether it's in the MDL or the

1 JCCP would be allocated a certain number of written discovery  
2 requests to ask. You know, to the extent the JCCP has already  
3 asked some of those, those would count against those limits  
4 unless, of course, the JCCP would -- you know, opts to withdraw  
5 those for whatever reason.

6 Is that Your Honor's understanding as well?

7 **THE COURT:** Yes.

8 **MR. WARREN:** Okay.

9 **MS. SIMONSEN:** Your Honor, just to clarify, I think  
10 that there may be more nuance here than Mr. Previn [sic] is  
11 revealing.

12 It is the defendants' position that what the plaintiffs  
13 should be doing is coordinate to serve common interrogatories  
14 and requests for admission or at least majority common  
15 interrogatories and requests for admission on the defendants  
16 because, otherwise, we could be facing -- you know, let's say  
17 they get, you know, five interrogatories for, you know, every  
18 ten bellwether plaintiffs. It's 50 different interrogatories  
19 that we might have to serve when, surely, there is at least  
20 some common ground across these bellwether plaintiffs in terms  
21 of what they need to seek from the defendants. And we know  
22 that's the case because so far, they have served identical  
23 requests for production across the two proceedings.

24 The -- I believe that in the MDL, where at least as to  
25 Meta, the plaintiffs have served two interrogatories, they may

1 not have been bellwether specific, but at least with respect to  
2 requests for production, those have been consistent across all  
3 of the plaintiffs in the JCCP and the MDL. And we would submit  
4 that the same should be the case with respect to  
5 interrogatories and requests for admission.

6 **MR. WARREN:** I'm not entirely sure I understand  
7 Ms. Simonsen's position here.

8 I think the idea is that each bellwether would have an  
9 opportunity to make a decision what they want to do with the  
10 written discovery that they're allocated. If it's serving the  
11 same for each one, that may be that client's choice. If it's  
12 serving different ones, that may be that client's choice.

13 I mean, this is intended to be an opportunity to be  
14 distinct, unlike the general liability discovery that was  
15 subject to the Court's earlier discovery limits order.

16 **THE COURT:** Since I'm hoping you can work this out,  
17 one thing I want you -- I'll give you a little bit of guidance  
18 and you can keep this in mind.

19 As we have done with kind of the plaintiffs writ large,  
20 there are common rogs; right? For the bellwethers as a  
21 subgroup, there may be a way to parse it out where there's a  
22 set of common rogs among all bellwethers in the MDL and all  
23 bellwethers in the JCCP which is maybe only one or two common  
24 for that subgroup; and then, in addition, each individual one  
25 gets their own -- you know, so it's -- so, in other words,

1 you've got a subgroup of common rogs for the subgroup of  
2 bellwethers; right? And then each individual bellwether has  
3 their own individual number; right?

4 And so that way, this addresses Ms. Simonsen's concern,  
5 which is if they are truly repetitive across all bellwethers,  
6 which could happen -- right? -- then you could use the  
7 common -- a common bellwether set of rogs -- right? -- number  
8 of rogs; right? And you could jigger the numbers and kind of  
9 work out a deal to move numbers around if you want.

10 I'm just throwing that out there as part -- to consider as  
11 part of your deal. It seems to me it has some appeal,  
12 unless -- because you know what kind of discovery you're going  
13 to serve -- you're sure that every rog served by every  
14 bellwether is going to be unique to that bellwether.

15 **MR. WARREN:** Even if they aren't, I don't understand  
16 why there needs to be a delimited common set or what that  
17 accomplishes. I think the point is --

18 **THE COURT:** To avoid repetition because, in other  
19 words, if all -- and I forget. There's how many?

20 **MR. WARREN:** There's 12.

21 **THE COURT:** 12 in the MDL and --

22 **MR. VANZANDT:** 21.

23 **THE COURT:** -- 21, right; so, 30, whatever.

24 If everybody individually serves the exact same rog,  
25 you're just killing trees -- right? -- because all you're doing



1 is you're going to cut and paste the same rog across each  
2 individual bellwether and then they're going to cut and paste  
3 their response across each of those rogs; right? And what does  
4 that serve?

5 **MR. WARREN:** Well, I think the issue, Your Honor, is  
6 that each of these bellwethers is an individual.

7 **THE COURT:** I'm not saying they don't get their own  
8 individual numbers.

9 **MR. WARREN:** I understand. But they may have more or  
10 less individualized issues, depending on their case. So they  
11 may have a desire to utilize those common rogs more or less,  
12 depending on how individualized their circumstances are. For  
13 example, there may be a client that has a lot of issues around  
14 having reported their CSAM to one of the defendants and the  
15 defendants not having taken that down.

16 **THE COURT:** And maybe I wasn't explicit when I said  
17 working out a deal where there's this subdivision of common per  
18 bellwethers and individuals per bellwethers, but also with a  
19 provision that you can move those numbers around per  
20 bellwether; right?

21 So, in other words, if there's one bellwether who is only  
22 ever going to -- so what that means is, across the group of  
23 bellwethers, there's really only going to be one common rog  
24 because this one bellwether has so many specific issues. You  
25 can try to jigger the -- come up to an agreement to jigger the

1 numbers. These are presumptive numbers.

2 This is an idea; right? If you can't come up with cutting  
3 it that way, then I would propose that you try to work out a  
4 way to avoid killing as many trees by trying to figure out a  
5 way to serve rogs that are, quote, "common per bellwether" in,  
6 like, one document as opposed to 12 or 31 documents.

7 Do you understand? Just --

8 **MR. WARREN:** We'll give it a shot, Your Honor.

9 **THE COURT:** -- I'm worried about kind of just the  
10 rigmarole of too much -- too much paper.

11 **MS. SIMONSEN:** And, Your Honor, to be clear, we have  
12 no problem with any common interrogatories being served in one  
13 document on behalf of all bellwether plaintiffs; and, in fact,  
14 our proposal had been that even though there would be --  
15 you know, we would be answering on behalf of all bellwether  
16 plaintiffs, that that would still only count as one  
17 interrogatory against the limit. So we're in full alignment on  
18 that issue.

19 I think the dispute between the parties is, of the overall  
20 rogs that the bellwether plaintiffs are permitted to serve,  
21 what proportion of them should be required to be common across  
22 all bellwether plaintiffs and what proportion of them may the  
23 bellwether plaintiffs choose to serve individually?

24 And I would --

25 **THE COURT:** You mean, you're not talking about the 45?

1 You're talking about whatever number you come up with here?

2 **MS. SIMONSEN:** Correct, Your Honor.

3 **THE COURT:** What I'm hearing, unless you've got a good  
4 response to that, each case at some level is going to be  
5 differentiated where there's no way to know across all of them  
6 how to -- that's why I was saying you might have an escape  
7 clause to jigger the numbers because I don't know if there's  
8 any way to know or require that they all be common.

9 **MS. SIMONSEN:** I think that's something we can discuss  
10 further with the plaintiffs.

11 I mean, just as one illustration of how common these types  
12 of inquiries can be, we negotiated an extensive defendant fact  
13 sheet where we were able to identify common requests across all  
14 bellwether plaintiffs that we are responding to.

15 There are any number of other issues like those that I  
16 could imagine plaintiffs could at least try to coordinate so  
17 that they're not issuing sort of different variations of what  
18 are essentially the same request across different bellwether  
19 plaintiffs; right?

20 If there's some required coordination, which is, of  
21 course, the point of these coordinated proceedings is to  
22 facilitate that kind of coordination, I think it would be very  
23 helpful, particularly given the case schedule we are on.

24 It would also be consistent with the approach that we've  
25 taken in the discovery limitations order with respect to other

1 discovery limits. For example, the State Attorneys General get  
2 32 identical interrogatories on the Meta defendants for each  
3 State AG. So they've got to serve 32 of the same, but then --  
4 excuse me. This is the Meta defendants on the AGs are allotted  
5 32, but then they're allowed to serve six AG-specific  
6 interrogatories.

7 So, you know, approximately, you know, one-fifth,  
8 one-sixth of the overall total number of interrogatories  
9 permitted to be served can be case specific; but otherwise,  
10 there should really be an effort, we would submit, Your Honor,  
11 for these plaintiffs to coordinate because there's going to be  
12 a lot of common information that they're going to be seeking.

13 **THE COURT:** I didn't hear an unwillingness for there  
14 to be coordination on, quote, "common rogs."

15 **MR. WARREN:** There's certainly not an unwillingness to  
16 talk this out with the defendants.

17 I do want to observe, though, that the defendants are  
18 trying to have it both ways. They have served interrogatories  
19 on each of the bellwethers that sometimes overlap, sometimes  
20 don't. Sometimes they're very similar but with slightly  
21 different wording. They have put us through the exact exercise  
22 they're trying to avoid for themselves, which, you know -- and  
23 that horse is already out of the barn. We already have had to  
24 respond to that written discovery.

25 So it doesn't seem fair that they should get the benefit

1 of this brand-new mechanism when they've availed themselves of  
2 exactly the thing that they're talking about.

3 **THE COURT:** I'm not ordering a mechanism. But if you  
4 can work something out to at least mitigate or address this  
5 concern, I think you should try to. Otherwise, you know --  
6 well, try to work it out because it --

7 **MR. WARREN:** We will.

8 **THE COURT:** Yeah.

9 **MR. WARREN:** We'll try to work it out this afternoon;  
10 and if we can't, we will bring it back to Your Honor.

11 **THE COURT:** All right. So contact Ms. Fox if you need  
12 to come back.

13 **MR. WARREN:** Thank you.

14 And I think Mr. VanZandt had a point for the JCCP.

15 **THE COURT:** Sure.

16 **MR. VANZANDT:** Joseph VanZandt.

17 Just to point out for the JCCP, we are endeavoring to work  
18 together, when we can, on issues. For example, all the RFPs  
19 that have been issued, approximately -- I can't remember the  
20 number -- they were identical to what the MDL did. That makes  
21 sense.

22 Here, we are talking not only plaintiff-specific but also  
23 now state-specific discovery. So, for example, in the JCCP, we  
24 issued special interrogatories under the California code which  
25 are slightly different. And so -- and also for RFAs, we have

1 affirmative offenses -- defenses to deal with in the JCCP. So  
2 there are slight variances.

3 And the concept of having to do one document for all  
4 bellwether discovery, again, we don't think would work. Our  
5 discovery is being issued under California law. We're under  
6 different schedules. There's different deadlines that apply.

7 So we're certainly going to endeavor -- I mean, at the end  
8 of the day, by necessity --

9 **THE COURT:** For example, if you're using the form  
10 rogs, those are going to be the same across all the  
11 bellwethers; right?

12 So I guess the point is -- I want to save the trees -- if  
13 you're able to consolidate and, you know, reduce repetition, I  
14 think you should because it just seems the rule of reason  
15 should apply.

16 **MR. VANZANDT:** Okay. And we've shown -- this is  
17 premature. This hasn't happened yet. The RFPs were identical.

18 There has been -- there have been no case-specific  
19 interrogatories or RFAs in the MDL. So whether or not they're  
20 going to be identical or not, that's to be determined.

21 **THE COURT:** Right. Okay. So --

22 **MS. SIMONSEN:** And I appreciate the point Mr. VanZandt  
23 just made, which I think illustrates that there is a lot of  
24 room for common ground on what they can serve.

25 **THE COURT:** It sounds like we've got the beginnings of

1 a deal to be made in the hallway.

2 **MR. VANZANDT:** Thank you, Your Honor.

3 **MS. SIMONSEN:** Thank you, Your Honor.

4 **THE COURT:** All right. So that's discovery limits.

5 Let's take a short break for the staff to reset. And  
6 maybe I can get my computer to work.

7 (Recess taken at 2:04 p.m.)

8 (Proceedings resumed at 2:18 p.m.)

9 **THE CLERK:** Recalling 22-md-3047.

10 **THE COURT:** Okay. Next issue is PI plaintiffs'  
11 responses to defendants' RFPs, which was the subject of the  
12 letter brief filed two days ago.

13 **MS. COLOMBO:** Good afternoon.

14 **MR. HALPERIN:** Good morning, Your Honor.

15 **MS. COLOMBO:** Oh, go ahead.

16 **MR. HALPERIN:** Sure.

17 Good afternoon. Greg Halperin for the Meta defendants.

18 **MS. COLOMBO:** Jessica Colombo, Motley Rice, on behalf  
19 of the personal injury plaintiffs.

20 **THE COURT:** All right. So it's only been a couple of  
21 days, but I have briefly reviewed the brief.

22 So there have been -- it looks like there have been  
23 attempts to narrow and come to some agreement on this. Is  
24 there -- is it really -- I mean, it sounds -- have you really  
25 broken down, or are you still trying to talk it through?

1           **MS. COLOMBO:** Well, Your Honor, I think with respect  
2 to the first group of requests that pertain to third parties,  
3 there have been attempts on the side of the plaintiffs. We  
4 have agreed to search for responsive documents with respect to  
5 the plaintiffs.

6           But for us, the real -- the real sticking point has been  
7 expanding that search to include all of this information for  
8 third parties. And with respect to whether we have broken down  
9 on that issue, I think for defendants, that has been a sticking  
10 point as well.

11           **THE COURT:** So I'm clear, there is no longer dispute  
12 as to searching for documents for these Requests 32, 33, 34,  
13 and 66 specific to the plaintiffs; is that right?

14           **MS. COLOMBO:** Yes, Your Honor.

15           **THE COURT:** Okay. And then --

16           **MR. HALPERIN:** If I could just, Your Honor.

17           **THE COURT:** Yeah.

18           **MR. HALPERIN:** Our understanding -- and Ms. Columbo  
19 can correct me if I'm wrong -- is that is true as to 32, 33,  
20 and 34. The dispute as to 66 is as to the plaintiffs  
21 themselves.

22           **MS. COLOMBO:** Yes, that is correct. I'm kind of  
23 discussing 66 separately as that pertains to information  
24 relating to the plaintiffs.

25           **THE COURT:** Okay. So, but as I understand, there is



1 agreement for -- between the parties for plaintiffs to search  
2 for documents responsive to 32, 33, and 34.

3 **MR. HALPERIN:** As to the plaintiffs themselves, but  
4 not their family members, correct.

5 **MS. COLOMBO:** Yes, Your Honor.

6 **THE COURT:** Okay. So I'm going to so order that. So  
7 it's so ordered. So it's more than just an agreement.

8 Okay. I guess, Ms. Columbo, I mean, I do note the  
9 requests on their face -- but it sounds like this is not the  
10 intent -- on their face are not time limited in any way. So,  
11 for example, there do appear to be some outer bounds to those  
12 requests that may be out of the bounds of proportionality; but  
13 I don't believe the defendants are looking, for example, for  
14 foreclosures that happened in 1993.

15 **MR. HALPERIN:** I believe, Your Honor, everything is  
16 limited to the relevant time period. It's just in the  
17 instructions portion of the RFPs.

18 **THE COURT:** All right. So thank you for that  
19 clarification.

20 With that clarification, you know, there is a protective  
21 order in place. If it is limit- -- truly limited to parents,  
22 legal guardians, and people they reside with, give me your best  
23 shot why that's not proportional.

24 **MS. COLOMBO:** Sure, Your Honor. I'll do my best.

25 So --

1           **THE COURT:** You're not arguing it's not potentially  
2 relevant within the scope of discovery; right? It's really a  
3 proportionality argument?

4           **MS. COLOMBO:** So, Your Honor, I would say it's both.  
5 There is a proportionality argument. But to the extent these  
6 events happened and had no connection to the plaintiff's mental  
7 health and no impact on the plaintiff's mental health, I think  
8 we would say that it's not relevant whether a caretaker went  
9 through an adoption process, because at least with respect to  
10 RFPs 32 and 33, that also includes caretakers, which  
11 Mr. Halperin can correct me if I'm wrong but that's not a  
12 defined term.

13           So to the extent "caretaker" could encompass someone who  
14 is simply providing childcare, we think that the relevance of  
15 the information that they're seeking here is marginal, if -- if  
16 it exists at all.

17           **THE COURT:** I mean, on the face -- well, maybe I was  
18 focusing on the -- all right.

19           All these requests refer to household members -- right? --  
20 and parent, legal guardian, or anyone with whom the plaintiff  
21 resided. So I don't see -- is "caretaker" somehow embedded in  
22 here through the definitions? Or --

23           **MR. HALPERIN:** It is not, Your Honor. And, in fact,  
24 in the most recent letter we sent to plaintiffs narrowing our  
25 RFPs, which was our July 26 letter, we narrowed the definition

1 of "household" to biological parent, stepparent, legal  
2 guardian, or anyone with whom the plaintiff user resided part-  
3 or full-time during the relevant time period.

4 **THE COURT:** Okay. So does that resolve "caretaker" in  
5 at least the scope of the people who are the third parties at  
6 issue?

7 **MS. COLOMBO:** So I don't think that's the issue,  
8 Your Honor. Caretakers are explicitly listed in the request  
9 separate from household members.

10 **THE COURT:** I'm just -- I'm not seeing -- at least as  
11 reproduced in the brief, I'm not seeing the word "caretaker."  
12 I see parent, legal guardian, anyone with whom plaintiff  
13 resided. I'm seeing household members. That's all I'm seeing.

14 **MR. HALPERIN:** And if I may, Your Honor, going back to  
15 the July 26th letter, we expressly told plaintiffs (as read):

16 "Defendants propose that these productions be  
17 provided for any biological parent, stepparent, legal  
18 guardian, or anyone with whom the plaintiff user  
19 resided, either part-time or full-time, during the  
20 relevant time period. Please confirm if you will run  
21 this narrowed search."

22 **MS. COLOMBO:** So then caretakers are not at issue  
23 anymore, Your Honor.

24 What I would say on that is we do still think that these  
25 are too broad, both in the third parties that are involved.

1 Anyone that resided in the household for -- or the plaintiff  
2 resided with part-time or full-time could potentially encompass  
3 people who really have no information that bears on the issues  
4 in this litigation. It could be family members. It could  
5 be -- it could be parents that the plaintiffs reside with for a  
6 very limited time throughout the year. So that's kind of on  
7 the people.

8 But I think on the substance -- substance of the requests,  
9 the bigger issue for us here is really that these requests are  
10 so broad and not really narrowed in any way to be connected to  
11 the issues in this case. So I think that it's helpful to kind  
12 of look at exactly what it is the defendants are asking for.

13 So by way of example, for Request Number 33, that is a  
14 request where the defendants are asking for all documents  
15 related to any civil investigations or proceedings, which would  
16 encompass family court documents, truancy court documents,  
17 juvenile court documents, divorce records.

18 So that means that if a member of a plaintiff's household,  
19 whether that be a sibling or a family member who's not part of  
20 the immediate family, or resided with the plaintiff for a very  
21 limited period of time, went through a divorce or a custody  
22 battle, that that would be within the request that the  
23 defendants have made.

24 So for us, to search for all of these documents that might  
25 not have any -- have had any impact on the plaintiff's mental

1 health and has the potential to pull in information that is  
2 sensitive and private for third parties who did not sign up to  
3 have their sensitive and private -- private information aired  
4 in this litigation, for us, that's just not proportional to the  
5 needs of the case.

6 **MR. HALPERIN:** Your Honor, a few responsive points.

7 First, as to the scope of the people involved, all we're  
8 asking for are documents in the possession, custody, or control  
9 of the user plaintiffs themselves. So to the extent that these  
10 potential events pertain to someone who lived in the household  
11 only a very short period of time, they're likely not to be in  
12 the user plaintiff's documents at that point.

13 Second, as to the breadth of the requests, Ms. Colombo is  
14 going back to the original request as written, not the  
15 narrowing that we've agreed to over the course of our  
16 negotiations. We are not seeking any civil lawsuit at this  
17 point. We are seeking very specific civil lawsuits.

18 And, third, as to the sensitivity or private nature of  
19 these documents, as Your Honor referenced, we do have a  
20 protective order in this case, and we've followed it even in  
21 this very briefing. We've brought to Your Honor's attention,  
22 in the course of the letter briefing, very specific examples  
23 where these sort of events have implicated --

24 **THE COURT:** In the interest of time, confidentiality  
25 is not going to win the day for the plaintiffs here. So --

1           **MS. COLOMBO:** Your Honor, may I make one additional  
2 point?

3           **THE COURT:** Sure.

4           **MS. COLOMBO:** So looking at -- looking at this idea of  
5 anyone who's resided in the house, for example, if a nanny  
6 lived in the house and went through a family court proceeding  
7 or went through an adoption proceeding, it is possible that  
8 there might be ESI that reflects a text or an email, for  
9 example, that reflects that that happened, but it's hard for us  
10 to envision how that has any impact on the plaintiff's mental  
11 health or any relevance here.

12           So really, our issue is just the overbreadth of these  
13 requests and the fact that we already have very expansive  
14 search terms that are -- that we're running in these cases that  
15 are meant to get at all potentially relevant documents related  
16 to mental health.

17           **THE COURT:** Let me be clear. Defendants aren't asking  
18 for a search of some extra universe of documents that haven't  
19 been collected yet; correct?

20           **MR. HALPERIN:** We are not. We're asking for two  
21 things, Your Honor: searches of the repositories themselves  
22 and, if the plaintiffs know of responsive documents pursuant to  
23 the ESI protocol, they should produce those notwithstanding  
24 search terms.

25           **THE COURT:** Okay. So, I mean, to the extent the

1 bellwethers, some of them are adolescents or were children  
2 during the relevant time period, they may -- I mean, as counsel  
3 pointed out, they may have nothing -- right? -- which is good  
4 for you, I guess, in that sense; right? And so why not run the  
5 searches and prove they have nothing?

6 **MS. COLOMBO:** So, certainly, Your Honor.

7 I think where we might run into potentially responsive  
8 documents, you know, a lot of these young people's lives are  
9 lived online, so there could be texts or emails where they're  
10 just texting their friends and saying, you know: This is  
11 what's going on with my nanny or my aunt or anyone.

12 So we have not run the searches yet because, you know, we  
13 still have been discussing the breadth of --

14 **THE COURT:** You understand -- I mean, as I understand  
15 the defense's argument, if they get discovery and if it's shown  
16 that a nanny who lived in the house maybe for ten years --  
17 right? -- or more with a particular bellwether, at the  
18 deposition, presumably their plan -- tell me if I'm wrong -- is  
19 to ask that particular bellwether "Did this nanny's divorce" --  
20 or maybe she got arrested or whatever; right? All these fall  
21 within those categories of what's being requested here.

22 "If something happened to that nanny, did that affect you?  
23 How did it affect you?"

24 I assume that's the purpose of asking for all this.

25 **MR. HALPERIN:** Absolutely, Your Honor.

1           **THE COURT:** Right. And if the answer is "no," that's  
2 actually good -- in some sense, it's good for you; right? I  
3 mean, to some extent, some of this discovery is -- I assume  
4 you're probably going to think about using it on the plaintiff  
5 side; right?

6           So I don't see -- (a) I don't see how it's beyond the  
7 scope of relevance, first, and I don't really hear an argument  
8 that it's not potentially relevant because it either proves  
9 something or it proves a negative; right? And (b) if they're  
10 not asking for a brand-new search, they're just asking for you  
11 to come up with search terms that would capture what they think  
12 is here, I don't see the extra burden.

13           So I don't really -- what I'm going to ask you to do is --  
14 I mean, there have been proposals on search terms to get at  
15 this. I hope you've heard me repeatedly talk about I'd hope  
16 you can work that out.

17           Given that we're not talking about a brand new collection  
18 and all that, it's just running an extra set of search terms  
19 just for the bellwethers, I just -- I don't see the burden  
20 here.

21           And I do think -- to the extent there's an argument it's  
22 not relevant, I don't agree. Relevant for discovery purposes,  
23 not for the case.

24           And given the limitations -- this is all subject to the  
25 limitations that the defendants have put on the requests as



1 they've narrowed it through the meet and confer. So defendants  
2 don't get to go back to the broader, originally drafted  
3 requests.

4 Okay. You understand that.

5 All right. So, okay. So let's talk about Request 66 and  
6 romantic breakups. So I guess the question here is: Is there  
7 a way to get at this in the meet and confers?

8 I mean, there was some indication that the plaintiffs were  
9 going to give some kind of chart or some summary information of  
10 what happened because some of these plaintiffs didn't  
11 experience any of this -- right? -- and some may have --  
12 right? -- may have. And so I thought there was going to be  
13 some -- one of the footnotes said there was going to be an  
14 exchange of information just categorially as to which  
15 bellwethers have these kinds of events in their lives, and then  
16 you could go from there; right?

17 So, for example, if, hypothetically, a bellwether  
18 plaintiff had a crush on their middle school teacher, it was  
19 never disclosed -- right? -- but they felt -- you know, and  
20 nothing ever came of it -- right? -- I don't know if that's  
21 something that -- if you disclose that in, like, chart form, I  
22 don't know if that's something the defendants are going to care  
23 about; right?

24 And I don't even know if that falls within the definition  
25 of "heartbreak" here. But, see, there are outer boundaries to

1 what people could reasonably describe as heartbreak --  
2 right? -- that I think might be helped if -- I mean, you'd have  
3 to go back and interview your clients. But one way, instead of  
4 trying to run searches on it and potentially come up with stuff  
5 that is totally irrelevant, is come up -- in the meet and  
6 confers, come up with a chart of "These are the events" -- for  
7 example, some of these bellwethers may never have anything that  
8 they say ever broke their hearts; right? So that would help  
9 narrow the dispute some.

10 So is there any way to get at it that way or try to  
11 crack -- because it seems -- I mean, it's not impossible, but  
12 there's going to be some art to coming up with search terms to  
13 get at this in a way that is going to satisfy everyone.

14 **MS. COLOMBO:** Your Honor, plaintiffs are more than  
15 willing to engage in an exchange of information that would then  
16 help the defendants figure out where to focus for purposes of,  
17 you know, as they've stated, trying to figure out events that  
18 might have had an impact on the plaintiff's mental health.

19 Really, I think our issue is just taking a full -- full  
20 inventory of, in some cases, nearly or over a decade worth of  
21 romantic -- romantic breakups, particularly at a time when  
22 young people are just starting to explore romantic  
23 relationships. We think that that is unnecessary. And if we  
24 could proceed in a more targeted way, that's something that we  
25 have always been willing to do.

1           **THE COURT:** I mean, have you tried -- I haven't seen  
2 exactly what your proposals are, and I haven't parsed what all  
3 the proposals are to narrow this.

4           Have you tried to limit it to, like, relationships that  
5 lasted a minimum of six months? You know what I mean? Some  
6 way to avoid kind of the one-week, you know, fling that  
7 probably wouldn't have an effect on anyone.

8           **MR. HALPERIN:** Yeah, we're certainly happy to do that.  
9 We haven't talked the specifics of exactly what a breakup means  
10 because their position has just been no breakups.

11           But I do agree with Your Honor's opening suggestion that  
12 we handle this on a case-by-case basis. As Your Honor saw in  
13 the footnote, we did ask the plaintiffs to identify which of  
14 these events happened to individual plaintiffs. Plaintiffs  
15 have said they're willing to do that. They haven't yet done  
16 it. I would ask that that be done fairly expeditiously so that  
17 we can consider it as part of the search term negotiations that  
18 are due to be wrapped up next Friday.

19           **THE COURT:** I mean, it sounded like there's not --  
20 there's a willingness to try to go back and try to figure out  
21 which plaintiffs actually even had any kinds of these events in  
22 their lives that are of any note; right?

23           **MS. COLOMBO:** Yes, there's certainly a willing [sic]  
24 on the side of the plaintiffs, Your Honor, to work to narrow  
25 this.

1 In terms of that initial exchange of information, I'm not  
2 sure that we've discussed that up into this point; so this is  
3 the first that I'm hearing of that proposal. But we would be  
4 more than happy to do that.

5 And to the extent that that would allow the defendants to  
6 focus on the relevant information -- or potentially relevant  
7 information here, that's certainly something that we're willing  
8 to discuss.

9 **THE COURT:** So with respect to Request 66, it sounds  
10 like you should meet and confer and try to work that out  
11 because there's (a) ways to separate out bellwethers for whom  
12 this is just not relevant and not an issue; and then, even for  
13 those who it may even potentially be relevant, there are  
14 probably only a limited number of events in their lives that  
15 are even potentially relevant, again, given length and scope of  
16 relationships and all that.

17 **MS. COLOMBO:** Yes.

18 And, Your Honor, I do want to just correct a statement  
19 that was made in the brief. Defendants had cited an example  
20 with respect to a particular bellwether, Mullen, who they have  
21 discovered evidence suggesting that there may be a relevant  
22 breakup.

23 We had -- we had included in the brief that that plaintiff  
24 was running case-specific search terms to get at issues related  
25 to this relationship. But there was a miscommunication, and

1 that plaintiff has not been running plaintiff-specific search  
2 terms, although they have seen and produced documents related  
3 to that relationship. That is my understanding.

4 **THE COURT:** Is the representation that they will  
5 run --

6 **MS. COLOMBO:** The representation in the brief is that  
7 they already were.

8 **THE COURT:** But, I'm sorry. Is the representation now  
9 that you are going to?

10 **MS. COLOMBO:** I would have to confer for -- confer  
11 with counsel for that plaintiff. I'm sure that they would be  
12 willing to discuss that with the defendants.

13 We have started to propose and run plaintiff-specific,  
14 case-specific search terms; and those communications have kind  
15 of -- or those correspondence have kind of broken off to  
16 individual counsel for those cases.

17 **THE COURT:** So you need to -- you do need to do this  
18 expeditiously. So for that -- for privacy, I won't give the  
19 name; but for that particular bellwether, it seems to me if  
20 it's already been identified, I don't -- you can go back and  
21 talk to their individual counsel, but I don't see a reason not  
22 to run the search terms and get those documents produced for  
23 that one, you know, pretty quickly because it can't be that  
24 huge a universe of electronic files.

25 **MS. COLOMBO:** Understood.

1           **THE COURT:** And for the rest of them -- I'm going to  
2 say what I said on the other issues. For the rest of them with  
3 regard to Request 66, I'm going to expect to see significant  
4 progress, if not full agreement, by the time we come back for  
5 the next DMC.

6           So that gives you plenty of time to work it out but,  
7 you know, doesn't give you leave to drag your feet on working  
8 it out until 28 days from now. Do you understand?

9           **MR. HALPERIN:** Yes, Your Honor.

10          **MS. COLOMBO:** Understood, Your Honor.

11          **THE COURT:** Okay. Good.

12          **MS. COLOMBO:** Thank you.

13          **THE COURT:** And I appreciate that.

14          So I think -- is the order clear on how we're going to  
15 handle Requests 32 to 34?

16          **MS. COLOMBO:** Yes, Your Honor.

17          **MR. HALPERIN:** Yes, Your Honor.

18          **THE COURT:** Okay. So, you know what? We'll reference  
19 this in the DMC order; but if you could put in a -- like a stip  
20 and order specific to Requests 32 to 34 -- because some of it  
21 is reflected in your letters on how --

22          **MR. HALPERIN:** Sure.

23          **THE COURT:** -- you've narrowed things -- I think that  
24 might, just for the record, be easier for you-all and for me,  
25 frankly.

1           **MR. HALPERIN:** We're happy to prepare --

2           **THE COURT:** So specific --

3           **MR. HALPERIN:** -- something.

4           **THE COURT:** -- to that one, submit a stipulation and  
5 proposed order just so everybody knows exactly what has to get  
6 done for those requests.

7           **MR. HALPERIN:** I apologize for speaking over  
8 Your Honor.

9           But we're happy to prepare something, share with opposing  
10 counsel, and submit.

11           **THE COURT:** All right. And why don't you include what  
12 you're planning on doing for Request 66 there as well.

13           **MR. HALPERIN:** Will do.

14           **THE COURT:** Okay?

15           **MS. COLOMBO:** Thank you, Your Honor.

16           **THE COURT:** Can you get that to me by early next week?  
17 mid next week?

18           **MR. HALPERIN:** I think we can target Monday,  
19 Your Honor.

20           **THE COURT:** There you go. Okay. All right. Two  
21 down.

22           Do we need to talk about what should be in the JCCP  
23 bellwether discovery in the DMC statements? Is that really --

24           **MS. SIMONSEN:** Your Honor, Ashley Simonsen for the  
25 Meta defendants.

1 I had hoped we wouldn't have to discuss this and that it  
2 would be non-controversial that we could provide updates to  
3 Your Honor by JCCP bellwether discovery, but the plaintiffs  
4 would not allow us to include it in the DMC statement. And  
5 this was their proposal for resolving the dispute, was to  
6 present it to Your Honor.

7 **MS. HAZAM:** And, Your Honor, we had also hoped that we  
8 would --

9 (Stenographer interrupts for clarification of the record.)

10 **MS. HAZAM:** Of course. Thank you. Lexi Hazam for the  
11 personal injury and school district plaintiffs.

12 We had also hoped that we wouldn't have to bring this to  
13 Your Honor because we think that the defendants' request is  
14 unreasonable and only serves to burden this Court.

15 Judge Kuhl has now ruled in her minute order from  
16 August 2nd that she is overseeing JCCP bellwether written  
17 discovery; and, therefore, what defendants had proposed  
18 doing -- which was including pages, I think something in the  
19 arena of the eight to ten pages of charts, listing all of that  
20 discovery, listing the status of defendant fact sheets for the  
21 JCCP bellwethers -- we thought was a burdensome introduction to  
22 this statement which has never included information like that  
23 before and would be burdensome for the parties to compile about  
24 a litigation that the MDL plaintiffs are not directly involved  
25 in.



1 The parties to the JCCP can, of course, provide that  
2 information to their court, which is actually overseeing that  
3 discovery and resolving disputes about it.

4 We are willing, however, as we have indicated in the  
5 statement and to defendants, to include a brief status update  
6 about what's happening in the JCCP, the same way we have each  
7 month in the case management conference statement for  
8 Judge Gonzalez Rogers, and to attach the most recent JCCP  
9 status report, which would contain the JCCP parties' own  
10 reports to that Court about its bellwether discovery.

11 And I also know that the JCCP wishes to be heard on this.

12 **THE COURT:** Mr. VanZandt.

13 **MR. VANZANDT:** Joseph VanZandt for the JCCP  
14 plaintiffs.

15 We agree with Ms. Hazam on this issue. We -- you know,  
16 writing these statements is a big burden. Very helpful. But  
17 between the DMC statement, the CMC statement, the JCCP CMC  
18 statement, our lives a lot of times revolve around writing  
19 these statements.

20 And making one, a statement like the DMC statement here,  
21 necessarily more complex, requiring the JCCP plaintiffs to put  
22 a chart in that we're not even doing for our own court, is  
23 going to require us to be directly involved in reporting what's  
24 happening with bellwether plaintiffs. We just think it would  
25 be not a good use of the parties' time and resources doing

1 that.

2 Certainly, we always are happy to pass along any reports  
3 and updates we provide to Judge Kuhl to Your Honor through the  
4 JCCP statements that we're already drafting. And many times  
5 those are on different schedules.

6 **THE COURT:** Okay. So --

7 **MS. SIMONSEN:** Your Honor, may I just briefly respond?

8 I want to be clear that we were not insisting on including  
9 detailed eight to ten pages of updates.

10 I did offer to Ms. Hazam, when we were trying to negotiate  
11 this, could we just condense our summary of the discovery into  
12 a couple of paragraphs; and plaintiffs' response was no. They  
13 would not allow us to include any updates on JCCP bellwether  
14 discovery.

15 So I think what would be helpful is just for Your Honor to  
16 confirm that we are allowed to include basic information about  
17 discovery served on JCCP bellwether plaintiffs, discovery  
18 served by JCCP bellwether plaintiffs.

19 And any disputes that are brewing between the parties with  
20 respect to that discovery, some of which Your Honor just  
21 recognized, is going to be common across the proceedings; and  
22 Your Honor is going to be managing, as I understand it, any  
23 common issues with respect to bellwether discovery, to the  
24 extent they arise, between the MDL and the JCCP.

25 Plaintiffs have insisted on including very detailed

1 updates on the discovery of defendants to date. We're simply  
2 wanting to provide Your Honor with up-to-date information.

3 And that's our position.

4 **THE COURT:** Okay. So this is just administrative at  
5 this point. So, yes, attach the most recent JCCP status  
6 report. And really, because it probably includes things that  
7 go beyond discovery that I don't probably need to see, you  
8 could even just rip out the pages that are irrelevant to things  
9 that I'm thinking about here. So you can attach that to the  
10 DMC status reports.

11 You can continue to provide a short summary of what's  
12 going on in the JCCP to the extent, you know, that's somewhat  
13 helpful. It's at least good for background, but it doesn't  
14 need to be, you know, pages and pages on that.

15 But it is, I think, clear that because of the overlap  
16 between the cases and the way Judge Kuhl is coordinating with  
17 Judge Gonzalez Rogers and this Court, and certainly there is a  
18 long precedent and history of state-federal coordination in  
19 these kinds of situations, if there's a dispute that you-all  
20 reasonably anticipate is within the realm of disputes that I'm  
21 going to decide, at least as an initial matter, it should be in  
22 the ripe dispute section here. All right? And if it's an  
23 unripe dispute that still falls within the ambit of things that  
24 I'm probably going to hear, it should be in the unripe dispute  
25 section.

1           **MS. SIMONSEN:** Yes, Your Honor.

2           **THE COURT:** And other than that, I don't think I --  
3 because I'll have the statement, I'll have the summary of  
4 what's going on, and then I'll have whatever detail you want to  
5 give me on specific disputes. I don't know if I need anything  
6 further from the JCCP in the DMC status reports.

7           **MS. HAZAM:** Agree, Your Honor.

8           And if I may, we have no objection to presenting to  
9 Your Honor disputes that will come before Your Honor. That is,  
10 of course, the purpose of our statements. So if there are ripe  
11 disputes for Your Honor's attention, they'll be there; unripe  
12 disputes will be there.

13           We do differ with Ms. Simonsen's characterization of what  
14 this Court is handling with regards to JCCP bellwethers  
15 vis-à-vis Judge Kuhl, and I know that Mr. VanZandt will speak  
16 to that.

17           So what we would propose is that -- we often have a one-  
18 to two-paragraph, at most, update of general developments in  
19 the JCCP that we submit with our case management conference  
20 statements every month to Judge Gonzalez Rogers. We would  
21 include that here. We would also attach the statement, or the  
22 relevant portions thereof, from the JCCP. We think that is  
23 sufficient.

24           The defendants want to recite all of the discovery  
25 statistics from the JCCP, how many requests have been made. We

1 do not think we should be doing that.

2 **THE COURT:** You already won.

3 **MS. HAZAM:** Okay. Thank you.

4 **THE COURT:** So I'm not asking for all the statistics,  
5 and I'm hearing Ms. Simonsen saying she's not demanding or  
6 really asking for that.

7 **MS. SIMONSEN:** That's right, Your Honor.

8 We would just -- we would, though, like to be able to tell  
9 Your Honor, for instance, of the 21 JCCP bellwether personal  
10 injury plaintiffs, 20 of them have served three interrogatories  
11 each. The following interrogatories are common across that  
12 bellwether discovery with interrogatories served by the MDL  
13 bellwether JCCP plaintiffs.

14 A dispute has arisen with respect to one of those common  
15 interrogatories, which I understand would be a dispute that  
16 would be presented to Your Honor because it's a dispute about  
17 what the defendants must produce in response to an  
18 interrogatory that all bellwether plaintiffs have served.

19 We would then give Your Honor an update on that dispute.  
20 It would be in the unripe or the ripe dispute section. That's  
21 perfectly fine.

22 I mean, but just to illustrate, like, it would have been,  
23 I think, helpful for Your Honor to know in advance of  
24 discussing this discovery limitations issue exactly how many  
25 rogs and RFAs had been served by the JCCP bellwether

1 plaintiffs, were they common, but we were not allowed to put  
2 that information in front of Your Honor, and it's just basic  
3 updates.

4 What I want to be clear on is, Ms. Hazam is trying to,  
5 I think, constrain the short update to the types of updates  
6 we've been providing to Judge Gonzalez Rogers; but because  
7 Judge Gonzalez Rogers is not overseeing JC- -- any discovery,  
8 those updates have not included much information about  
9 discovery.

10 **THE COURT:** The short update should philosophically  
11 track the short updates you've been providing to me on what's  
12 been going on in the MDL; right? Again, not pages and pages;  
13 right? And I'm not going to put a hard limit of one to two  
14 paragraphs, but I'm not expecting more than one to two  
15 paragraphs in general.

16 **MS. SIMONSEN:** Understood, Your Honor.

17 And I think the pages and pages were merely charts that we  
18 had agreed could be moved to the appendix, like we did with the  
19 charts that pertained to the MDL plaintiffs.

20 **THE COURT:** To be honest, unless there's something  
21 important in the charts, I'm probably not going to parse them  
22 in detail anyway, so...

23 **MS. SIMONSEN:** Fair enough, Your Honor.

24 **THE COURT:** All right.

25 **MS. SIMONSEN:** And we'll take that into account going

1 forward for the MDL updates as well.

2 **THE COURT:** Okay.

3 **MR. VANZANDT:** Joseph VanZandt.

4 Unfortunately, we've now kind of gone away from the  
5 administrative aspect.

6 And Ms. Simonsen has misrepresented what Judge Kuhl's  
7 order said as to which judge is going to handle what issues.  
8 Judge Kuhl never said or her order never said that Your Honor  
9 would be handling all common issues related to bellwether  
10 plaintiffs. Judge Kuhl's order was explicit that to the extent  
11 it's a bellwether-specific plaintiff or a JCCP bellwether, that  
12 she would handle those issues and those disputes.

13 So we're now relitigating what we argued about in front of  
14 Judge Kuhl last week, and what Ms. Simonsen said is not what  
15 Judge Kuhl's order was.

16 **THE COURT:** Well, I mean, her minute order says what  
17 it says, and what she said at the conference last week is what  
18 she said, and I assume everybody's going to abide by it.

19 I do take her point. It did come through to me that, you  
20 know, if I happen to rule on something that is common to both  
21 cases, she's probably going to take it into account; right?

22 So, and I do think there is some understanding that if it  
23 is discovery in the MDL that overlaps with the discovery in the  
24 JCCP, her -- I mean, she gave the one example of numerical  
25 limits; but philosophically, if there's an overlap like that

1 where it affects -- a decision here would affect both cases --  
2 right? -- then it should come to me as an initial matter.  
3 That's kind of philosophically my understanding of her  
4 approach.

5 How that gets applied to specific disputes is going to be  
6 up to you-all to work out; but, again, I'm assuming you're  
7 going to apply the rule of reason there and, you know, try to  
8 figure out which is the appropriate court.

9 But I guess don't be surprised if you try to bring  
10 something in front of her and she's going to tell you to come  
11 back to me.

12 **MR. VANZANDT:** Your Honor, certainly, Judge Kuhl  
13 taking into account issues that you have ruled on as related to  
14 the MDL bellwethers is one thing.

15 Another thing is what I understand Ms. Simonsen to be  
16 proposing: that if it's some common issue, even if it  
17 relates to a bellwether JCCP plaintiff, that we would have to  
18 come to Your Honor to raise something as it's related to a JCCP  
19 plaintiff.

20 **THE COURT:** How could it be common if it's specific to  
21 one bellwether JCCP?

22 **MR. VANZANDT:** Well, that's the problem. Defendants  
23 are attempting to be able to litigate every time we write a  
24 statement as to what issues are and are not common and then to  
25 parse which judge is going to address that, which goes against



1 the spirit of what Judge Kuhl has said. If it's a JCCP  
2 bellwether plaintiff issue, she will address that. If  
3 Your Honor addresses something before she does, she will  
4 consider that. And we will deal with that with her, not that  
5 we're bringing disputes regarding JCCP bellwethers to  
6 Your Honor.

7 **THE COURT:** Are you doing the same thing with her that  
8 you're doing for me? Are you giving her kind of an update of  
9 what are unripe disputes on the horizon? I mean, are you --

10 **MS. SIMONSEN:** We generally give her updates on  
11 discovery and how it's been proceeding. To date, because most  
12 of that has been on the defensive side, I don't think we've  
13 actually had much opportunity to raise disputes with respect to  
14 bellwether discovery, but I would imagine we would do the same  
15 thing there.

16 **THE COURT:** You are meeting with her monthly; right?

17 **MS. SIMONSEN:** Correct, Your Honor.

18 **THE COURT:** Okay. So my -- I mean, I can't -- well,  
19 my strong suggestion, directive is to raise with her -- give  
20 her a heads-up, like you're giving to me, of unripe disputes;  
21 and in that context, if you already know there's a dispute as  
22 to who you think should be deciding that issue, ask her --  
23 right? -- at that month; right?

24 **MR. VANZANDT:** Right.

25 **THE COURT:** And she can give you maybe more guidance

1 on which way to go.

2 But, you know, I will say this: I'm here to manage  
3 discovery. That's my job in this case; right? So I  
4 certainly -- you know, if you want to bring disputes to me, I'm  
5 not going to -- I'm probably going to be more receptive to  
6 hearing them anyway because that's -- I mean, that's the limits  
7 of my role anyway.

8 **MR. VANZANDT:** Understood, Your Honor.

9 And we did exactly that with Judge Kuhl just last week.  
10 We indicated that there was going to be a dispute about the  
11 extensive third-party subpoenas issued in the JCCP. Judge Kuhl  
12 indicated that she would handle that. So we're meeting and  
13 conferring on that dispute, and we'll be taking that to  
14 Judge Kuhl.

15 **THE COURT:** Okay. But, again, if you exercise the  
16 able judgment you all have, you should try to figure out which  
17 judge is more appropriate instead of trying, you know, to  
18 artificially shoehorn one into the other. Because I'll tell  
19 you, neither Court wants to feel like they're being played off  
20 against the other; right? So just keep that in mind too.

21 **MR. VANZANDT:** Understood, Your Honor. And we're  
22 not -- we're certainly not trying to shoehorn issues.

23 Our position is just simply that if it's a discovery issue  
24 related to a JCCP bellwether plaintiff whose case is in front  
25 of Judge Kuhl and will be tried in front of Judge Kuhl -- and

1 Judge Kuhl was extensively involved in the selection and the  
2 pools of those plaintiffs -- that she should be addressing that  
3 issue instead of having to argue about what's a common issue,  
4 what's not. JCCP plaintiff discovery handled in the JCCP,  
5 recognizing Your Honor's orders on discovery limits as to the  
6 defendants and on any orders that Judge Kuhl could take into  
7 account, and the MDL bellwether plaintiff discovery would  
8 happen here.

9 We're not going to -- we're not -- the JCCP is not going  
10 to find a common issue and then go to Judge Kuhl and say,  
11 "Well, you should decide this as to the MDL plaintiffs because  
12 it's a common issue." That would be completely nonsensical.

13 **THE COURT:** Okay. I don't think we need to talk --  
14 this is something -- it's going to get resolved through  
15 implementation more than trying to draw kind of semantic bright  
16 lines between what goes into which court.

17 But, again, this is, again, something you should be able  
18 to work out anyway. So -- but if you don't, I mean, either she  
19 or I is going to decide whether -- which Court is going to hear  
20 it. So that's all I can tell you.

21 **MS. SIMONSEN:** Thank you, Your Honor, and we  
22 appreciate your guidance on the common discovery issues that  
23 have been presented to date.

24 **THE COURT:** Okay. So then the letter brief I got this  
25 morning on foreign investigations, who's going to talk about

1 that?

2 **MS. SIMONSEN:** Ashley Simonsen again for the Meta  
3 defendants.

4 **MS. HAZAM:** And Lexi Hazam again for the plaintiffs,  
5 MDL plaintiffs.

6 **THE COURT:** Okay. So, first, there is apparently  
7 agreement or close to agreement on what to do about domestic  
8 U.S. investigations.

9 **MS. HAZAM:** Actually, Your Honor, what we have to  
10 report is some progress on the overall issues here, enough that  
11 I think we would like to request the Court allow us to continue  
12 with some meet and confer to see if we can come to a final  
13 compromise.

14 We had further discussions just this morning; and while we  
15 are not there, we are much closer to there. And so I think it  
16 would make sense to do that. I think we're in agreement on  
17 that.

18 **THE COURT:** Great. I should start handing out gold  
19 stars to lawyers who work out disputes that don't require --

20 **MS. HAZAM:** Your Honor, it's the Olympics. So --

21 **THE COURT:** -- football helmets.

22 **MS. HAZAM:** -- in the spirit.

23 **THE COURT:** Great. Okay. So I'm going to hold  
24 abeyance on deciding this; and you tell me -- what? -- within a  
25 week or so whether it's resolved; and we'll -- at this point,

1 I'm going to -- I won't terminate it as moot, but I'm going  
2 to -- I feel like that's where it's going to end up.

3 **MS. HAZAM:** Thank you, Your Honor. We would like to  
4 resolve it soon, so a week would be appropriate.

5 **THE COURT:** Great. Thank you for that update.  
6 Okay. Relevant time period. I guess it's Mr. VanZandt  
7 again.

8 **MR. VANZANDT:** Thank you, Your Honor. Joseph  
9 VanZandt.

10 **THE COURT:** Okay. So, first of all, Ms. Simonsen, my  
11 understanding is Meta -- and I just want to understand what  
12 Meta has already agreed to do, which is using the search terms  
13 for -- I think basically for features but generally using  
14 search terms you've agreed to. If documents hit prior to 2012,  
15 you're not going to withhold them. And you're not doing  
16 restrictive searches to cut off by date for those search terms.  
17 Is that right?

18 **MS. SIMONSEN:** So what we're doing, Your Honor, to  
19 make sure I'm clear, is we're running feature-specific terms  
20 and feature-specific terms only, prior to 2012.

21 For each set of feature-specific terms, we are running  
22 them back to January 1st of the year of launch of that feature.

23 I will say that many of the features that Your Honor  
24 ordered feature-specific discovery on do go back quite far in  
25 time.

1 To the extent documents hit on what are quite broad  
2 feature-specific terms, notwithstanding the term "feature  
3 specific," to the extent documents that hit on those terms are  
4 responsive to any of plaintiffs' requests for production of  
5 documents, we intend to produce them, assuming they are not  
6 privileged. We are not limiting what we are going to produce  
7 to things like, for instance, technical and implementation  
8 documents.

9 **THE COURT:** And just to be clear, you're not limiting  
10 them based on date either?

11 **MS. SIMONSEN:** Only -- no, not based on date. Only --  
12 right.

13 So, for instance, if -- I believe we were -- we ran some  
14 terms relating to algorithmic feeds back to 2009. Let's just  
15 take for an example a term that we're running back to 2009. If  
16 we pull back from our search terms a document relating to  
17 algorithmic feeds from 2004 -- or 2006 -- excuse me -- it's not  
18 going back to 2004 -- and it's responsive to plaintiffs'  
19 request for production, we would produce it.

20 **THE COURT:** Okay. So, Mr. VanZandt, why doesn't  
21 that -- with that understanding of what they're doing, what is  
22 missing? Why doesn't that get to what you need?

23 **MR. VANZANDT:** Sure. Joseph VanZandt.

24 So, respectfully, Your Honor, that's not sufficient. So  
25 even defendants' own briefing, the best that they can say of

1 JCCP plaintiffs getting evidence going back related to these  
2 youth issues in our case, the best that they can say is that we  
3 might, we should, or we'll likely get documents because of  
4 these search terms.

5 And the algorithmic issue Ms. Simonsen used is not a good  
6 example. If you actually look at the search term examples that  
7 Meta used in the DMC, search terms that they're saying are  
8 going to produce these youth-related parental controls, age  
9 verification issues are -- I'll just give you five of them --  
10 underage -- the term will be "underage" and "abuse" or  
11 "exploit." So the next ones will be "teen" within 15 words of  
12 "conversation"; "youth" within 15 words of "message"; and "end"  
13 within five words of "news feeds."

14 It's virtually impossible to imagine how, other than sheer  
15 happenstance, that the terms like that would reveal documents  
16 related to things like parental controls and age verification.

17 And to that point, of the production that we've received  
18 so far from Meta, the current production of documents before  
19 2012 amounts to less than .07 percent of the document  
20 production; only about 251 documents of the, I believe, 600,000  
21 documents that have been produced.

22 And the problem is highlighted even more if you look at  
23 some of the key C-suite Meta employees who were there prior to  
24 2012.

25 So, for example, Andrew Bosworth, the chief technology

1 officer from 2006 to present, his custodial file, there are  
2 four documents that date back before December 31st, 2012.

3 Kris Cox, chief product officer since 2005, there's one  
4 document in his file dating back to December 31st, 2012.

5 Adam --

6 **MS. SIMONSEN:** Your Honor, may I just interrupt for a  
7 moment, because we have --

8 **MR. VANZANDT:** I wish you wouldn't.

9 **MS. SIMONSEN:** Well, we have --

10 **MR. VANZANDT:** I'm in the middle of talking.

11 **MS. SIMONSEN:** -- prior agreements, though, that the  
12 names of specific custodians are not something that is to be  
13 disclosed on the public record. So...

14 **MR. VANZANDT:** Okay.

15 **THE COURT:** Refer to people just --

16 **MR. VANZANDT:** Understand.

17 **THE COURT:** -- generically as an officer.

18 **MR. VANZANDT:** Understand.

19 The former head of Instagram, one document dated before  
20 December 2012.

21 The former chief operating officer from 2007 to present,  
22 no documents. None. Out of 10,000 documents, none before  
23 July 1, 2013.

24 The outgoing chief operating officer at Meta from 2008 to  
25 2022, no documents before April 1 of 2014.



1 And then, finally, the founder and CEO of Meta, there from  
2 2004 to present, there are zero documents dated on or before  
3 December 31st, 2012, out of 8,000 documents produced.

4 So it is going to be -- it would be pure happenstance that  
5 documents related to things like age verification and parental  
6 controls would come up. Defendants can't even guarantee it. I  
7 mean, they're hedging on words like "may" and "could," and  
8 that's just not sufficient when we're talking about the  
9 critical importance of this evidence as it relates to  
10 negligence and punitive damage claims in the JCCP.

11 **MS. SIMONSEN:** Your Honor, the reason there are not  
12 many documents yet in plaintiffs' hands from before 2012 is  
13 because, as Your Honor is aware, Meta originally collected  
14 documents based on the relevant time period that it had  
15 proposed.

16 Then, through negotiations and presentation of disputes to  
17 Your Honor, the time period was expanded with respect to  
18 feature-specific discovery back before 2012.

19 It was not until that point in time, which I think was a  
20 month or two ago, that we were able to get all of the documents  
21 falling within that universe before 2012 into our systems to  
22 review, run the right search terms.

23 We have expressly informed plaintiffs that we have  
24 substantially completed custodial file productions for the 36  
25 or '7 anticipated deponents only based on the relevant time

1 period as we originally defined it. The rest of the materials  
2 are coming, and we have an agreement that the rest of the  
3 materials will be produced by September 20th.

4 And with respect to, I believe, five anticipated deponents  
5 who are scheduled to be deposed earlier, we're completing those  
6 productions sooner. And I don't believe any of the names that  
7 I heard Mr. VanZandt say are within any of those early  
8 deponents.

9 So that's the reason they don't have documents yet from  
10 before 2012.

11 It is not hypothetical to imagine that documents hitting  
12 on some of these search terms are going to be responsive to a  
13 lot of plaintiffs' document requests. I mean, an example would  
14 be we've got the word "infinite," "endless begin," "endless  
15 end," "pause," or "never-ending," any of those terms within  
16 five of "scroll," "feed," "news feed," or "newsfeed."

17 These are very broad terms. And so, you know, I don't  
18 think there's any reason to doubt -- and I think the bottom  
19 line too is that Your Honor previously indicated that to the  
20 extent plaintiffs could come to you after receiving productions  
21 and show a specific need for broader discovery, Your Honor  
22 would be open to that. Well, we haven't produced the documents  
23 yet. So it is, at best, premature for the plaintiffs to be  
24 raising this.

25 My final point would be, Your Honor, that you did order

1 time-period-specific search terms for only certain features,  
2 concluding, under a careful proportionality analysis, that  
3 going back to January 1st of the year of launch for every  
4 feature was a proportional approach to the case.

5 So while it, I think, is quite likely that plaintiffs  
6 would get any documents relating to parental controls and age  
7 verification before 2012 that may exist based on the search  
8 terms we're running that are feature specific, it simply wasn't  
9 Your Honor's order that plaintiffs get documents relating to  
10 those specific features from before 2012.

11 **MR. VANZANDT:** Your Honor, that's -- that's part of  
12 the problem. Your Honor's prior ruling is related to feature  
13 specific, and it's tailored more to a product liability type  
14 case, which is what the MDL is. There may be a negligence  
15 aspect to this case, but that has not been ruled on yet. And  
16 so your order -- Your Honor's order on that was following  
17 Judge Gonzalez Rogers' order regarding a product liability  
18 case.

19 In the JCCP, Judge Kuhl has explicitly ruled that  
20 defendants' platforms are not products. There is no product  
21 liability case. So we are dealing with only a negligence case,  
22 which is a broader concept.

23 And explicitly, her -- Judge Kuhl's order consistently  
24 discusses about defendants' conduct, their platform as a whole.  
25 It is not a -- it is not a -- it is not a -- sorry -- design --

1 feature -- that's what I'm looking for. It's not a  
2 feature-by-feature concept that this Court is currently ruling  
3 on. It does go back to the reasonableness of their conduct and  
4 the platforms as a whole and just focusing in on two really key  
5 issues, and that would be age verification and parental  
6 controls.

7 So age verification. Going back to 2005, Facebook became  
8 available to high school students in 2005; and then in 2006,  
9 anyone 13 years or older were allowed to join.

10 And so under this current ruling, the search terms related  
11 to things like age verification and parental controls would  
12 only apply to the years that those things were launched.

13 And so for age verification, the first rudimentary age  
14 verification that was put into place in 2013, which we believe  
15 was insufficient, it was, again, 2013, almost eight years after  
16 they began allowing people on there who had to be 13 years or  
17 older. It's eight years later before age verification is  
18 implemented, and so we would get no discovery about age  
19 verification going back for the first seven years.

20 **THE COURT:** Ms. Simonsen, if you ran a search -- I  
21 don't know if "age verification" as a phrase is a search term.  
22 Let's assume hypothetically it is. Just so I'm clear on what  
23 you're doing, if you run that search term and something comes  
24 up before 2013, you're going to produce it; right?

25 **MS. SIMONSEN:** Oh, certainly, Your Honor. For any of

1 the features that were launched on or after January 1st, 2012,  
2 we will produce documents relating to those features to the  
3 extent they hit on the search terms that we are running from  
4 2012 and later.

5 **THE COURT:** If something comes up before, like in 2005  
6 or 2008?

7 **MS. SIMONSEN:** So we're not running -- there are two  
8 sets of terms. There are the terms we're running from 2012  
9 onward, and those were carefully negotiated by the parties.  
10 Because those terms are so broad, including words like "youth,"  
11 "teen" as standalone terms, there are not necessarily  
12 feature-specific terms for every feature because any document  
13 that says the word "teen" is going to be pulled in for review;  
14 right?

15 Now, we're not running any feature-specific terms for  
16 features launched after January 1st, 2012, before that date, in  
17 accordance with Your Honor's order.

18 **THE COURT:** Okay. So with the understanding that it's  
19 possible the substantial completion deadline may get pushed and  
20 the discovery period may be extended, why don't we wait and see  
21 whether there really is a problem. Because, I mean, you have  
22 incomplete information on what's actually going to end up being  
23 produced --

24 **MR. VANZANDT:** Right.

25 **THE COURT:** -- especially from some of these older

1 employees; and until you've got the universe there -- and  
2 Ms. Simonsen -- I don't know if you -- she's correct.

3 If you find something in the document production that  
4 points you to a direction that hasn't been picked up by the  
5 search terms, I'm not foreclosing you from coming back. And,  
6 you know, probably what I'm going to do then, in that case, is  
7 probably suggest very strongly that you work out, like, some  
8 targeted search terms for those particular custodians, for  
9 example; right?

10 And I'm not precluding that. I'm not saying I'm going to  
11 do it, but I'm also not saying I'm not going to do it.

12 But I do think there is certainly every opportunity to  
13 come back to me and ask for more discovery. But I don't think,  
14 based on the current record -- because it's incomplete as to  
15 what you are going to get once the productions are done based  
16 on the currently -- currently implemented search terms.

17 **MR. VANZANDT:** Understood.

18 And I believe I understood Ms. Simonsen, she just  
19 acknowledged that terms like "youth" and "teen," those are not  
20 going to be run all the way back prior to 2012 and even the --  
21 even the feature-specific search terms.

22 But I do want to make clear what our ask is here. We're  
23 being very narrow. So we've identified a subset of 15 of the  
24 RFPs. That's only 5 percent of the entire RFPs in this case.  
25 And we already have negotiated with the defendants the

1 agreed-upon core youth search terms, which is a limited list of  
2 search terms. So it's very, very narrow what we're asking, and  
3 it would only be related to 22 custodians who were at the  
4 company before 2012.

5 So we're not looking to undo anything. 95 percent of what  
6 Your Honor has ordered, the RFPs are untouched. But we do  
7 believe that this is really a critical issue here, and so we  
8 would be doing this, and very limited.

9 I understand what Your Honor is saying, and I think that  
10 makes sense. But I would ask this: Even in the meantime, we  
11 could be working with the defendants to confer and do run hits  
12 for these search terms -- the terms have already been  
13 negotiated; they have the documents and custodians -- so we  
14 could see what actually is. Do run hits for these youth terms  
15 for that time frame and see what the issue is.

16 **THE COURT:** I mean, I actually assumed when you're  
17 negotiating, part of the negotiation often is to get hit  
18 reports. You haven't done that?

19 **MS. SIMONSEN:** No. We absolutely did that,  
20 Your Honor. We ran -- we gave them many hit reports relating  
21 to the terms that we are running over the general relevant time  
22 frame.

23 **THE COURT:** Do it for these other terms.

24 **MS. SIMONSEN:** Because we were able to, as I recall  
25 correctly, accept plaintiffs' proposal on feature-specific

1 terms without modification, I don't believe we produced hit  
2 reports on feature-specific terms, but that's because we were  
3 not claiming any kind of burden. We agreed to run the terms  
4 that the plaintiffs were requesting.

5 **THE COURT:** I do think in the interest of time,  
6 because we're waiting for you to finish the production --  
7 again, it may turn out that some of these older -- not  
8 "older" -- these employees who have been around longer don't  
9 have anything because, just over time, things disappear and  
10 just, you know, go away and are not kept.

11 So -- and as the plaintiffs receive more documents, you  
12 may want to refine some of the terms as well. You may want to  
13 refine some of the custodians and maybe narrow it even further.

14 So I would suggest very strongly that you continue to meet  
15 and confer on this as you get more information and run hit  
16 reports so you can talk intelligently about how much more work  
17 and how many more documents this is going to sweep in. Because  
18 if it's, like, a handful of extra documents, even across all  
19 the other custodians, why fight about it; right?

20 **MS. SIMONSEN:** Your Honor, the issue is that running  
21 brand-new search terms over the files of 22 or more custodians,  
22 whatever the number is, is not as straightforward as you may  
23 think because there is a -- there is sort of a two-step process  
24 involved in pulling in the relevant set of custodial files  
25 based on the search terms that have been agreed upon.



1           If we have to go back and repull based on new search  
2 terms -- I will tell you, Your Honor, we spent a massive amount  
3 of time and resources negotiating these terms already with the  
4 plaintiffs. The JCCP plaintiffs were very much welcome to the  
5 table for those negotiations.

6           And I think it's really inefficient. It's really,  
7 frankly, I think, unfair to Meta, which has been a very good  
8 faith actor in all this, to require us to now go back and redo  
9 this process because the JCCP plaintiffs want to throw a few  
10 more search terms in for what is supposed to be narrow,  
11 feature-specific discovery before 2012.

12           We may be voluntarily agreeing to substantially broaden  
13 it. But to be clear, we believe Your Honor's ruling, which  
14 limited pre-2012 discovery to feature-specific discovery, was  
15 the right ruling. And that is the position we would take, even  
16 if plaintiffs do come back with some request for new search  
17 terms to pick up more general liability discovery, as they  
18 refer to it.

19           So I just want that to be clear. I think we should wait  
20 and see. If there is some specific document plaintiffs think  
21 they need or that's missing that's, frankly -- it would,  
22 I think, in our view, have to be feature specific as to the  
23 specific features that Your Honor permitted discovery back to  
24 that point in time -- we'd be happy to talk with them about it.  
25 Of course they can come to us if they think that we need to run

1 something broader, and we will certainly talk with them.

2 But I think it's premature to be, in the middle of us  
3 trying to get massive productions out the door in a really  
4 short period of time, interfering with that, which it would, to  
5 try to be running a whole new set of hit reports.

6 **THE COURT:** I mean, you could prioritize. You don't  
7 have to do all the search terms. You could run sample search  
8 terms of what the plaintiffs think are the most important five,  
9 or whatever, three search terms across only one or two  
10 exemplary -- so, for example, the oldest employee of Meta,  
11 like, his files -- and see what comes up; right? Because,  
12 again, maybe very little comes up, and you're arguing about  
13 something that's a tempest in a teapot.

14 **MR. VANZANDT:** So --

15 **MS. SIMONSEN:** I appreciate Your Honor's guidance.

16 I do think -- I mean, what Mr. VanZandt is essentially  
17 asking is for Your Honor to reconsider your prior ruling  
18 without any change --

19 **THE COURT:** But I'm not doing that, and I'm not -- but  
20 I am -- like I said, if there's a good reason to come back for  
21 more discovery that's beyond the limits I've set -- within  
22 reason; right? And it has to be a good reason, not just  
23 because somebody just wants it; right? -- then make the pitch  
24 and we'll talk about it, and hopefully, you actually agree to  
25 it.

1 But it does seem to me that, just as on the plaintiff  
2 side, they need to wait and see how many documents you actually  
3 do end up producing from pre-2012 or whatever, it does help  
4 understand the scope of the dispute to run some sample hits.

5 You don't have to run all the new terms. You could  
6 pick -- I suggest the plaintiffs pick, you know, the top three  
7 or top five, a subset of those terms that you think are the  
8 most important. But you were able to identify for me age  
9 verification and parental controls. There are probably search  
10 terms that go directly to that; right?

11 **MR. VANZANDT:** So, Your Honor, these search terms are  
12 a little different because, as Ms. Simonsen is indicating,  
13 they're suggesting that they're going to run feature-specific  
14 search terms. The problem is, if the feature didn't exist,  
15 that's not going to be part of that.

16 We're talking more general search terms related to ages,  
17 young, youth, adolescents, child, because we're talking  
18 eight years.

19 **THE COURT:** Yeah. And so when I'm talking about  
20 running hit reports, I'm talking about running hit reports on  
21 the new terms that you said you've negotiated or you've already  
22 talked about.

23 **MS. SIMONSEN:** We have not, Your Honor. I really have  
24 to resist this because what Mr. VanZandt is suggesting is that  
25 we go back and, even though we've negotiated a relevant time

1 period for a set of general search terms, Mr. VanZandt now  
2 wants us to go back and run, as I understand it, all of those  
3 I think it's over 300 search terms --

4 **MR. VANZANDT:** No, no, no.

5 **MS. SIMONSEN:** -- or some subset even, over a set of  
6 documents that was -- that was collected merely to satisfy  
7 Your Honor's directive that feature-specific discovery before  
8 2012 occur.

9 And it's just not appropriate. It's inconsistent with  
10 Your Honor's prior ruling. You've already decided the issue.  
11 There are no new facts, no changes in circumstances, no new law  
12 that would -- that would justify requiring us to go back and  
13 completely revisit this.

14 And I have to emphasize, it was very, very difficult to  
15 arrive at a set of terms that was as broad as what plaintiffs  
16 were demanding while also ensuring we could meet the  
17 substantial completion deadline that we have committed to for  
18 all of these 35-plus anticipated deponents by September 20th.

19 So I just would ask that Your Honor -- I take the  
20 guidance. We will be happy to confer with the plaintiffs if  
21 there's something, particularly if it's feature specific from  
22 before 2012, that they think is missing.

23 But to revisit general discovery before 2012 at this point  
24 in time, they just haven't made the showing they would need to,  
25 which is to get reconsideration of Your Honor's prior ruling.

1           **THE COURT:** I guess maybe we're talking in  
2     abstractions. Is the -- is age verification not feature  
3     specific? Is parental control not feature specific?

4           **MS. SIMONSEN:** Age verification and parental controls  
5     are two features that were not launched prior to 2012. So what  
6     that means is the search terms that were negotiated from 2012  
7     forward are intended to encompass any documents that might  
8     relate to those features.

9           Those terms are very broad. They include 20-plus  
10    standalone youth terms like "teen," "young," "youth," that sort  
11    of thing; and so any document hitting on, for instance, the  
12    term "teen" is going to be pulled back. And if it also  
13    discusses the implementation of parental controls or age  
14    verification, it will be -- and it's responsive to the  
15    plaintiffs' RFPs, it will be produced.

16          **THE COURT:** Well, it sounds to me like what you need  
17    to do, then, before you can run even sample hit reports, which  
18    I do think at some level is going to be useful for me to help  
19    figure out whether or not any further discovery going back to  
20    that historical time period is even warranted, is work out  
21    three -- okay? -- three sample search terms -- right? -- that  
22    you think cover whatever you think you want to take discovery  
23    on -- right? -- from that early period.

24          It could be the phrase "age verification." It's not going  
25    to be the entire universe of large, you know, sets of search

1 terms from 2012 onward that have been previously negotiated.  
2 It's going to be targeted. As I understand, you've already  
3 represented it's a limited number of search terms.

4 **MR. VANZANDT:** Your Honor, we're proposing across 22  
5 custodians to run 20 search terms that the parties have already  
6 negotiated that are core youth search terms. That's the entire  
7 universe of what we're requesting. I certainly understand your  
8 instruction on doing some samples.

9 **MS. SIMONSEN:** I believe Mr. VanZandt is conflating  
10 the issue. There are over, I think -- there are hundreds of  
11 search terms that the parties negotiated to run from 2012  
12 forward. We then negotiated feature-specific terms to run from  
13 2012 backward.

14 We have not negotiated any general terms or other terms to  
15 run from 2012 backward. And if I looked at this list, I  
16 imagine it's going to include really broad words like "teen"  
17 and "youth" and "young." It's not going to be targeted.

18 So, again, what they are seeking is broad liability  
19 discovery from before 2012, and that's just not consistent with  
20 Your Honor's order enforcing principles of proportionality.  
21 We're already going back to 2012, 12 years of general liability  
22 discovery.

23 **THE COURT:** Okay. So in all of plaintiffs' arguments,  
24 although the theory of liability is general negligence and all  
25 that, you are pointing to specific features. I mean, to prove

1 negligence, you have to point to exactly where the negligence  
2 occurred, such as they did not implement age verification when  
3 you thought they should have; right?

4 **MR. VANZANDT:** Right.

5 **THE COURT:** And so this attempt to distinguish kind of  
6 broad-based platform-as-a-whole liability as opposed to  
7 feature-specific product liability, for purposes of discovery,  
8 I don't actually -- because they blend into each other and I  
9 don't see a hard line between them.

10 But I do think, again, for my benefit -- right? -- work  
11 out three to five targeted search terms that you think would  
12 hit on documents that predate 2012 for a limited number of  
13 custodians -- right? -- and maybe two -- right? -- just to get  
14 some statistics here. Right?

15 So first you need to work out what those limited number of  
16 search terms are, and then you need to work -- and then you  
17 need to identify which of the two custodians you want to do.

18 And then hopefully by that time, you'll have received more  
19 documents through the productions; right? And then Meta can  
20 take the time to run some sample hit reports to see what this  
21 sample hit -- search term hits on those custodians' documents.

22 And I'm not giving you hard deadlines to do it because I  
23 understand that there's other things going on; but do it,  
24 you know, with all deliberate speed; right? Because I assume  
25 at the next DMC, there's going to be a dispute now over whether

1 or not I should, in fact, order more discovery pre-two  
2 thousand -- more documents pre-2012, and it would help for me  
3 to have those statistics on what came up in these sample  
4 searches.

5 **MS. SIMONSEN:** If I may, Your Honor.

6 What I'm hearing is that you'd like us to run three to  
7 five targeted search terms. Do I understand correctly that  
8 that's feature-specific search terms? Because there is not --  
9 it's not going to be instructive for us to run a term like  
10 "teen" before 2012 -- right? -- or many of the very broad terms  
11 that we've agreed to run.

12 **THE COURT:** Again, like I said, yes, I do think it  
13 should be feature specific or at least feature targeted because  
14 the theory of liability, even in the JCCP case, is going to --  
15 you have to point to which features should have been  
16 implemented. You can't just say it was negligent as a whole.  
17 Like, what does that mean?

18 **MR. VANZANDT:** So Ms. Simonsen's proposal would be for  
19 us to search for features eight years before they existed.

20 Instead, we want to know what Meta and the leaders at Meta  
21 were talking about in 2005 and 2006 when they decided to let  
22 teenagers on their platform or they decided to allow 13-year --  
23 someone 13 years old with no age verification and no parental  
24 controls. They likely weren't discussing a feature that didn't  
25 come into existence previously.



1           So we're looking at very specifically what was happening  
2 around the time frame that former president Sean Parker of the  
3 company said that they consciously knew what they were doing  
4 and they did it anyway. That is not related to a feature.  
5 It's related to their conduct, and it's related to their notice  
6 and intent.

7           If they -- if they discussed whether or not children of a  
8 certain age should be on there or not and they did do nothing  
9 to prevent it, they didn't implement a feature, we need to know  
10 what's those discussions were.

11           **THE COURT:** You just used the word "feature." That's  
12 my point. In order for them to have notice of what they should  
13 have done, there should have been -- the feature comes up in  
14 that context; right?

15           **MR. VANZANDT:** The feature is necessary because of a  
16 harm that was happening. So they could be discussing potential  
17 harms to youth that could have -- that could happen that they  
18 were seeing. It doesn't have to be tied to a -- to a specific  
19 feature.

20           **THE COURT:** Well, I think if the terms are targeted  
21 enough and they're focused on a feature, they're going to --  
22 they're going to pick up the documents that relate to them.

23           And you come back again and say, "Look, we now have  
24 one-half of a report or a report from this week, but there was  
25 one from the previous week that didn't come up and it's clear

1 they're related." You know what I'm saying? It's not going to  
2 be perfect; right?

3 **MR. VANZANDT:** Yeah. But we're explicitly not asking  
4 to search for things like age verification. Instead, we are  
5 asking 20 terms related to underage users. That's what we're  
6 trying to get at. It's terms such as "young," "youth,"  
7 "adolescent," "child."

8 If in 2006 Mark Zuckerberg is discussing "child" in  
9 relation of who's on their platform, that is very, very  
10 relevant if they're talking about harm to those children. So  
11 we are looking to sample these search terms.

12 **THE COURT:** Even under California rules, that's going  
13 to be overbroad and oppressive. You can't just ask for any --  
14 because the word "teen" could come up in so many different  
15 contexts.

16 **MR. VANZANDT:** Your Honor, the whole case is about  
17 teens and children. I mean, that's what this entire litigation  
18 is about.

19 **THE COURT:** But he could be talking about, like, you  
20 know, teenagers' favorite flavor of bubble gum. It has nothing  
21 to do with this case.

22 **MR. VANZANDT:** Why would they be talking about that  
23 internally? They're talking about getting teens addicted to  
24 their platform. That's what we're alleging they planned all  
25 along.

1           **THE COURT:** Again, you've got to come up with more  
2 targeted terms to get at what you're getting at because just  
3 general terms here -- this is why I think the features are a  
4 good way of -- a lens of looking at what your negligence claim  
5 is going to be because the harm is related to the feature that  
6 was or wasn't implemented.

7           **MR. VANZANDT:** Your Honor, the harm in the JCCP, we're  
8 not -- it's not a feature-based case. It is about --

9           **THE COURT:** You're arguing --

10          **MR. VANZANDT:** It is about their conduct --

11          **THE COURT:** I've read the briefing. You're arguing  
12 that they knew -- you said it to me -- that they had notice  
13 that this was a potential harm and that they should have  
14 implemented this feature; right? That's part of your thesis;  
15 that the key to the negligence, as I understand, been briefed  
16 to me that I've seen, is that the lack of the feature when they  
17 had notice of the harm is part of the theory of the case;  
18 right?

19          **MR. VANZANDT:** And we need to know --

20          **THE COURT:** Tell me if I'm wrong.

21          **MR. VANZANDT:** Sure. And we need to know when they  
22 had notice of the harm.

23          **THE COURT:** First, am I wrong in understanding that's  
24 kind of the general thesis of the case?

25          **MR. VANZANDT:** We need to know when they had notice of

1 the harm. Searching for the title of a specific feature that  
2 didn't come into existence eight years from that time is not  
3 very helpful.

4 **THE COURT:** This is where I want you to work out,  
5 because I'm not saying the search term has to be the feature,  
6 but there's got to be a way to come up with a search term that  
7 captures the concept of the harm and the feature at the same  
8 time.

9 I mean, you-all are smart. You know how to craft search  
10 terms. There has to be a way to come up with something that's  
11 not just the word "age verification" -- right? -- but addresses  
12 what you're getting at -- right? -- that would capture both the  
13 harm and the feature; right?

14 But I think getting away completely from the feature which  
15 addresses the harm is going to -- you get -- you get way too  
16 overbroad then.

17 **MR. VANZANDT:** And then just one last thing. I don't  
18 want this to go unsaid.

19 Ms. Simonsen said there's been no changes in  
20 circumstances. I know the last time we were here talking, the  
21 JCCP bellwether pool had just been selected. There's been  
22 changes; plaintiffs in, plaintiffs out. But as it stands right  
23 now, we have three bellwether plaintiffs, one who started  
24 Facebook in 2006, one who started in 2008, and one who started  
25 in 2009.

1           So that's really what has led partly this push because  
2           they're going to be missing critical evidence for what was  
3           going on in the company when they started using the products.  
4           The features implemented in 2012 or later are not helpful for  
5           those plaintiffs.

6           **MS. SIMONSEN:** And, Your Honor, plaintiffs will get  
7           documents going back to 2006, the earliest date they've  
8           identified that the bellwether plaintiffs that have been  
9           selected used the platforms.

10          If anything, this argument only underscores why they  
11          absolutely should not get anything going back before 2006,  
12          which is something else they've been seeking.

13          And Mr. VanZandt's argument about the feature-specific  
14          issue, Your Honor is exactly right. Both in this Court and in  
15          the JCCP, the Courts, in deciding the motion to dismiss the  
16          demurrer there, adopted a feature-specific framework, and  
17          that's because the JCCP plaintiffs' negligence claim was  
18          equally predicated on challenging specific features of  
19          defendants' platforms.

20          That's in their master complaint at paragraphs 295 and  
21          439. They allege that an array of design features embedded in  
22          defendants' services work in combination to induce various  
23          harms.

24          In paragraphs 929 through '30, they specify the challenged  
25          features for their negligence claim.

1 And the JCCP Court, even in its demurrer ruling, framed  
2 the negligence analysis on a feature-specific basis. The Court  
3 said (as read):

4 "Plaintiffs are clear that they seek to prove  
5 injury to minors from the features that defendants  
6 used on their platforms, and that plaintiffs'  
7 allegations and their" -- quote -- "'harms' were  
8 caused by the design features of defendants'  
9 platforms is critical to this Court's decision."

10 That's at the demurrer order, pages 10 and 39.

11 Also at page 56, the Court held (as read):

12 "Because the master complaint can be read to  
13 state that defendants' design features themselves  
14 caused plaintiffs' harms, the demurrer cannot be  
15 sustained."

16 So it's -- it's -- there is no distinction. The mere fact  
17 that there are not product liability claims that remain in the  
18 JCCP has nothing to do with the fact -- with the reality that  
19 what remains are claims that are feature focused, both in the  
20 MDL and the JCCP.

21 **THE COURT:** Well, as I said, I think you two should  
22 work out -- these are just sample search terms; right? Work  
23 them out in a way that -- I mean, it's not going to be perfect  
24 for either side; right? It can't be so narrowly focused. It  
25 can't be just the word "age verification," or it can't be just

1 "the feature," but it should be broad enough to encompass the  
2 concept -- because search terms are just conceptual anyway --  
3 the concept that would pick up the harms that they're talking  
4 about from the lack of the features, if you understand what I'm  
5 talking about. Right?

6 **MS. SIMONSEN:** Yes, I do understand Your Honor's  
7 suggestion. And, I mean, we're happy to confer with them.

8 I do want to just reserve the right to continue to argue  
9 that regardless of the outcome of those searches, we don't  
10 think additional discovery is warranted but --

11 **THE COURT:** The reason I need the searches and the hit  
12 reports is so I can figure out how burdensome and how overbroad  
13 this is anyway. Because, like I said, it could be five  
14 documents and everybody could be happy; or it could be  
15 5 gazillion documents and then we've got to rethink what we're  
16 going to do. And I'm not going to make -- I can't make a  
17 judgment in the vacuum here.

18 **MR. VANZANDT:** Understood.

19 And, Your Honor, for the record, I would also like to  
20 reserve the right to continue arguing with Ms. Simonsen on this  
21 issue.

22 **THE COURT:** Everybody's supposed to keep meeting and  
23 conferring. So, yes, you should.

24 **MR. VANZANDT:** Sure.

25 **THE COURT:** Yes.

1           **MR. VANZANDT:** But to just kind of show what  
2 Ms. Simonsen did, reading a bunch of picked-out allegations, I  
3 could do the same thing, that don't defer -- don't refer to  
4 products from the demurrer ruling of Judge Kuhl.

5           (As read):

6           "Whether or not defendants are liable should be  
7 determined by focusing on the defendants' conduct.  
8 Defendants are alleged to have facilitated use of  
9 their platforms of youth underage by 13."

10          It's not talking about any specific -- so I could go  
11 through three pages of more general allegations that  
12 Ms. Simonsen left off. But at the end of the day -- and I'll  
13 stop with this. At the end of the day, I mean, negligence is  
14 not about specific features. It is about how Meta reacted when  
15 they found out about the harm. And it is not always going to  
16 be tied to specific features, and that's really all we're  
17 trying to get at here.

18           **THE COURT:** Well, let's take it a step at a time.  
19 Work out the search terms, get some sample hit reports and see.  
20 And, hopefully, the search terms, they're going to be  
21 negotiated in a way that hopefully will address both sides'  
22 concerns about underbreadth and overbreadth. Okay?

23          I will say -- this has come up a couple of times -- the  
24 Sean Parker interview, I don't know if the plaintiffs have done  
25 this, but that's an example of -- I assume you've served



1 discovery asking for what was he talking about or getting at,  
2 what was he referring to.

3 And so, to me, there are ways to get at your general  
4 liability/general negligence discovery if you can point to  
5 something specific that's already in the record to say, "We  
6 need follow-up discovery on that." And, again, I don't think  
7 Meta's going to oppose that if it's rational, reasonable, and  
8 proportional. All right?

9 So --

10 **MR. VANZANDT:** Understood, Your Honor.

11 **THE COURT:** -- I'm not foreclosing you from taking  
12 that discovery.

13 It's a matter -- here, we're talking specifically about  
14 the documents and the document searches.

15 **MR. VANZANDT:** Okay. Thank you for hearing us on this  
16 issue again. Thank you.

17 **THE COURT:** Okay. All right.

18 **MS. SIMONSEN:** Thank you, Your Honor.

19 **THE COURT:** I'm afraid I'm going to hear it again,  
20 aren't I? I'm happy to hear it.

21 Okay. So for the ease of staff, let's take a break again.  
22 Ten minutes.

23 **THE CLERK:** 3:40.

24 (Recess taken at 3:31 p.m.)

25 (Proceedings resumed at 3:43 p.m.)

1           **THE CLERK:** Now recalling 22-3047.

2           **THE COURT:** Okay. Are we done with the ripe issues?  
3 Because TikTok got resolved; right?

4           **MR. WARREN:** Your Honor, there is one other issue  
5 that's listed as ripe in the statement which concerns Meta's  
6 production of hyperlinked documents.

7           **THE COURT:** Oh, right.

8           **MR. WARREN:** Before getting to that, though, I did  
9 want to note that Ms. Simonsen and I had an opportunity to  
10 briefly touch base on the case-specific discovery issue, and  
11 I think I can represent -- or I'll let Ms. Simonsen represent  
12 herself.

13           **MS. SIMONSEN:** Your Honor, we just wanted to  
14 clarify -- Ashley Simonsen again, Covington & Burling, for the  
15 Meta defendants -- that given travel schedules, we won't be  
16 able to meet and confer on those limits immediately after this  
17 session today, but we will confer with plaintiffs tomorrow. We  
18 believe and will absolutely endeavor to come with a  
19 counteroffer to an offer that Mr. Warren has already made.

20           **THE COURT:** Great. Good to hear.

21           **MR. WARREN:** And I appreciate Ms. Simonsen getting my  
22 name right, for the record.

23           So on the issue of Meta hyperlinked documents, so I think  
24 the parties are getting closer here, but I did want to sort of  
25 flag for the Court what the issue is.

1       The issue is that, as we have looked through the documents  
2 produced to date, it has become clear that our fears have been  
3 realized. About 30 percent, if not more, of all documents  
4 produced by Meta contain one or more links to other documents  
5 which are not attached as family members and are not otherwise  
6 knowable to us.

7       It is our belief that many of those documents already  
8 exist in the production set or will be produced, but we have no  
9 way of relating those to the links as they appear in the  
10 documents.

11       What has really compounded this problem is the slow pace  
12 at which Meta has responded to our requests for hyperlinked  
13 documents. The last request we made was five months ago, and  
14 Meta made the production last night. That was simply 17  
15 documents where we were identifying hyperlinks that we were  
16 expecting to get a response to.

17       So what we have asked Meta to do is to -- is a protocol  
18 whereby we can provide them with a list of documents containing  
19 hyperlinks and, within 14 days, they will identify what those  
20 links are elsewhere in the production or produce the documents.

21       So that has been our offer to Meta. We think that is a  
22 fair offer that the Court should ultimately so order; but in  
23 fairness to Mr. Chaput, he has not had a chance to confer with  
24 his client to get us a response to that.

25       So that is ultimately what we are seeking, plus sufficient

1 information so that in our discovery database, we can actually  
2 make that relationship. And we've provided a template to Meta  
3 that they can just fill out that our vendor can then take and  
4 ingest and actually make those relationships clear.

5 This is becoming increasingly urgent as depositions become  
6 scheduled. We cannot show up to the depositions with a handful  
7 of documents that are essentially incomplete.

8 And I do have an example of one such document so you can  
9 see the extent of the problem, which I'd like to hand up to  
10 the Court just to illustrate where we are this with. So if I  
11 may approach.

12 (Document handed up to the Court.)

13 **MR. CHAPUT:** If I may, Isaac Chaput, Covington &  
14 Burling, on behalf of the Meta defendants.

15 It was my understanding prior to this conference that this  
16 issue was not going to be substantively argued today, so I'm a  
17 little bit surprised, frankly, that Mr. Warren is now handing  
18 documents up to the Court that I haven't seen before, we  
19 haven't talked about, or anything like that.

20 Mr. Previn -- Mr. Warren -- excuse me. I apologize.  
21 Mr. Warren's offer that he referenced was made this morning. I  
22 told him that I'm conferring with my client about it and that I  
23 would get back to him as soon as possible.

24 This issue simply is not ripe, Your Honor. And I think  
25 that consistent with Your Honor's prior guidance, the parties

1 need to confer before we start raising things with the Court  
2 and submitting loads of information that really isn't pertinent  
3 for resolution at that moment.

4 **MR. WARREN:** Your Honor, I really disagree. It's  
5 listed as ripe in the DMC statement. I think the defendants  
6 have come to the conference today with numerous new disputes  
7 that were listed as status updates that they've wanted  
8 the Court's clarification on.

9 And we're not asking the Court to take any action. We're  
10 providing an update. We're informing the Court of the offer  
11 that we've made to Meta. And we expect a response from Meta  
12 promptly, because this has been a very serious issue for us.

13 You know, I know that there is a potential extension on  
14 the horizon that the parties are working through.  
15 Notwithstanding that, the defendants have come to Your Honor  
16 earlier today and asked for essentially accelerated productions  
17 of things like device images that would have to happen even if  
18 there is a months' or more long extension.

19 So this is a very basic request that has come to the  
20 attention of Your Honor before. It has become a big problem  
21 for us. So we are simply alerting Your Honor to this issue.  
22 I'm hopeful that Meta actually responds to our request in a  
23 positive manner and agrees to what we proposed. If not, we  
24 anticipate coming back to Your Honor promptly on this.

25 **THE COURT:** Since I'm not being asked to do anything

1 today, you don't -- there's no need for you to -- you're not  
2 waiving any argument by not arguing this issue substantively,  
3 Mr. Chaput. So I understand that you need to work this out.  
4 You're trying to work it out. So I absolutely encourage that.

5 **MR. CHAPUT:** I will just say, Your Honor, this is not  
6 a new issue. The parties knew all along that collection of  
7 hyperlinks was going to be a problem. Your Honor resolved it  
8 in connection with the ESI protocol. We are following the ESI  
9 protocol. We are getting them documents as quickly as we can  
10 or finding the documents that are referred to. It is a manual  
11 process, and it does take time.

12 That -- all of that said, as I said, I am conferring with  
13 my client about plaintiffs' request that was made this morning  
14 in terms of this 14-day schedule, and we will get back to them.

15 **MR. WARREN:** Your Honor, I just want to be clear about  
16 when Mr. Chaput says they're working as fast as they can.

17 The individual plaintiffs in this case are being asked to  
18 give full forensic images of their devices within a matter of  
19 days.

20 Meta has taken five months to produce hyperlinked  
21 documents that appear in 17 documents. This is incredibly  
22 dilatory behavior; it's not excusable; it can't work. And  
23 that's the new information that's come to light, not the fact  
24 of the issue, but the fact that Meta's going to take this long  
25 to respond to our requests.

1           **THE COURT:** Okay. Well, hopefully, you'll be able to  
2 work out a protocol whereby documents identified by hyperlinks  
3 are, if not expeditiously, reasonably quickly collected and  
4 produced. And certainly, five months seems pretty long. So  
5 whatever procedures internally you and your folks have to do  
6 with probably contract attorneys, whoever's trying to find --  
7 or ESI folks who are trying to find the hyperlinked documents,  
8 you've got to figure out a way to speed that up anyway because  
9 the volume is going to get bigger, I assume, anyway.

10           **MR. CHAPUT:** Well, the volume may get bigger but,  
11 hopefully, remain consistent with what the ESI protocol does  
12 say, which is that the volume needs to be reasonable and  
13 proportionate as well. So --

14           **THE COURT:** Well, 17 is not -- not documents --

15           **MR. CHAPUT:** It was -- Your Honor, it was 17  
16 documents. The 17 documents, in fact, contained hundreds of  
17 hyperlinks. So that is part of the issue; right? Your Honor,  
18 is not hearing the full picture because we're arguing this live  
19 instead of with the benefit of having fully conferred and  
20 actually presented a ripe dispute to Your Honor --

21           **MR. WARREN:** Your Honor --

22           **MR. CHAPUT:** -- but we will be conferring.

23           **MR. WARREN:** I apologize. I didn't mean to cut you  
24 off.

25           This was presented as a ripe dispute. It's listed as a

1 ripe dispute.

2 And I do want to note, Mr. Chaput's point that there are  
3 hundreds of hyperlinks that appear in 17 documents is an exact  
4 illustration of the problem we're confronting. Again, that's  
5 17 out of over 100,000 documents that have been produced to us  
6 so far that contain these links.

7 We have been incredibly judicious in what we've been  
8 asking for. And the volume does need to increase  
9 substantially, perhaps beyond what the ESI protocol  
10 contemplated, because we just can't go forward understanding  
11 this information unless Meta actually produces what are in  
12 effect attachments, although they're coming under a different  
13 name with a different technical specification.

14 **THE COURT:** Again, I'm not hearing anybody asking me  
15 to make any rulings here. All I can say is -- you know what  
16 I'm going to say; right? -- work this out, if you can, because  
17 this is really just a procedural -- it's a process -- right? --  
18 to find the hyperlinked documents and get a process going that  
19 everybody can work with.

20 It probably won't be as fast as the plaintiffs want, but  
21 it can't be as slow as what the defendants have been doing. So  
22 try to work out something that is reasonably expeditious here.  
23 Okay?

24 **MR. CHAPUT:** We hear you, Your Honor.

25 **THE COURT:** Okay.



1           **MR. WARREN:** Thank you, Your Honor.

2           **THE COURT:** Are we done with -- are we done for today?

3           **MR. WARREN:** From the plaintiffs, yes, Your Honor.

4           **MS. SIMONSEN:** Same from the defendants' perspective.

5 Thank you, Your Honor.

6           **THE COURT:** There you go.

7 All right. So we're adjourned till the next hearing. Is  
8 there...

9 Oh, you know what? This is just more of a question.  
10 I think there was an administrative motion filed in connection  
11 with the request to submit additional information on state  
12 agencies; and then there was, like, a second one filed, like,  
13 immediately after, which by all appearances appears to be  
14 identical and not superseding the first one. So should we just  
15 terminate the first one as moot? Did the paralegal hit "file"  
16 twice, or what happened there?

17           **MR. LEWIS:** Chris Lewis for the AGs, Your Honor.

18 I think the first one can be taken as moot.

19           **THE COURT:** Terminated as moot. Will do.

20 All right. And just make sure, if your paralegals or  
21 secretaries happen to hit "submit" -- file it twice and that  
22 happens again, I think there's a way in the system to -- and if  
23 there isn't, send an email to Ms. Fox to -- because we --  
24 otherwise, something voluminous like that, we've got to do a  
25 comparison to try to figure out was there an intent here to

1 file something that superseded the other or was it just a  
2 mistake.

3 **MR. LEWIS:** We'll do that, Your Honor.

4 **MR. CHAPUT:** Your Honor, if I may briefly. Isaac  
5 Chaput for the Meta defendants.

6 The document that plaintiffs' counsel handed up to  
7 the Court is marked "Highly Confidential - Competitor." So I  
8 just wanted to make sure that that wasn't going to end up  
9 somehow filed or in the Court's records so that it's publicly  
10 accessible.

11 **THE COURT:** I handed it back.

12 **MR. CHAPUT:** Okay. I hadn't realized that.  
13 Thank you, Your Honor. That was all.

14 **THE COURT:** Mr. Warren, why don't you take it back  
15 because I'm not going to need it.

16 (Document handed down.)

17 **THE COURT:** So just for the record, I've returned the  
18 document, so it's not in the court records at all at this  
19 point.

20 **MR. CHAPUT:** Thank you, Your Honor.

21 **THE COURT:** Okay. Anything further?

22 (No response.)

23 **THE COURT:** Okay. When am I going to start hearing  
24 from some younger lawyers?

25 **MS. HAZAM:** You did today, Your Honor.

1           **THE COURT:** All right.

2           Okay. Well, look forward to seeing your status reports  
3 and hearing that you've resolved everything.

4           We're adjourned.

5           **THE CLERK:** We're off the record in this matter.  
6 Court is in recess.

7                       (Proceedings adjourned at 3:55 p.m.)

8                               ---o0o---

9  
10                               **CERTIFICATE OF REPORTER**

11           I certify that the foregoing is a correct transcript  
12 from the record of proceedings in the above-entitled matter.

13  
14   DATE: Sunday, August 11, 2024

15  
16                               Ana Dub

17                               \_\_\_\_\_  
18                               Ana Dub, RDR, RMR, CRR, CCRR, CRG, CCG  
19                               CSR No. 7445, Official United States Reporter  
20  
21  
22  
23  
24  
25